A Supplement

By way of

ADDITIONS to and AMPLIFICATIONS of the foregoing TREATISE,

CONCERNING

COPY-HOLD and CUSTOMARY

ESTATES:

Wherein the Grounds laid down in the ſaid *Treatiſe* are made good and confirmed by ſeveral Reſolutions and Judgements given in the Courts of the Common Laws of *England* in divers Caſes.

LONDON,
Printed by *John Streater*, *James Fleſher*, and *Henry Twyford*, Aſſignes of *Richard Atkyns* and *Edward Atkyns*, Eſquires. 1668.

Cum Gratia & Privilegio Regiæ Majeſtatis.

WING S6182

THE INTRODUCTION.

THE Learned Authour of the beforegoing Book, intituled, *The Compleat Copy-holder*, having in a very compendious manner treated of the Original of *Manors* and how constituted; and of their *Demesn Lands*, as also of the several *Tenancies* thereof, and of the nature of the *Services*, *Qualities*, and *Courts* incident and belonging thereunto; and (amongst the rest) of *Copy-holders*, *Copy-holds* and *Customary*

Eſtates, and their *Tenures*, *Services* and *Cuſtomes*, diſtinguiſhing them from the other Tenures and Services; ſetting forth therein likewiſe the Antiquity and Original of *Copy-holds*, the *Services*, *Duties*, and other things incident to ſuch Tenure; with divers *Cuſtomes*, *Preſcriptions* and *Uſages*, claimed by ſuch *Copy-hold-Tenants*, together with the manner of *Grants* and *Eſtates* thereof, and how and in what manner they are either to be granted or accepted of: Now becauſe the drift of the Authour of the ſaid Book was (as I conceive) to ſpeak more particularly of *Copy-hold* and *Cuſtomary Eſtates* then of the other Tenures; and therefore the Authour of the ſaid Book hath therein laid down ſome general Grounds concerning the ſame, but hath not confirmed them either by *Judgments* or *Precedents* of the *Common Law*, which would have

have more illuſtrated the ſame; and ſome things likewiſe concerning *Copy-holds* and *Cuſtomary Lands* and *Eſtates* have been omitted by the ſaid Authour worthy to be known by all Students and others whom the ſame may concern: therefore at the requeſt of divers perſons, by way of *Amplification* of what hath therein been formerly treated of by the ſaid Authour, and by way of *Addition* of what therein hath been omitted, I have added what hereafter followeth by way of a *Supplement* to the former Book; wherein I ſhall endeavour to contribute ſomewhat *de novo*, and to make good the former Grounds laid down in the ſaid Book, and what ſhall be added thereunto, by ſeveral *Reſolutions* and *Judgments* given in the Courts of the *Common Laws* of *England* in ſeveral Caſes concerning the ſame.

And therefore *Surrenders* (after a Grant thereof made) being one of the principal matters which do concern *Copy-holders* and their Estates, I ſhall firſt begin with them, and then proceed to other matters concerning *Copy-holders* and their *Cuſtomary Eſtates.*

Sect.

SECTION I.

What a Surrender of Copy-hold or Cuſtomary Eſtate is; to whom, and in what manner and place it is to be done; and who ſhall be ſaid ſuch a Tenant of a Copy-hold as may make ſuch a Surrender.

SUrrenders of Copy-hold-lands and Copy-holders are of two ſorts; *viz.* Surrenders Actual, and Surrenders in Law.

An Actual Surrender, according to the Definition of Mr. *Littleton*, and the beſt Deſcription of it, is a Copy-holder's yielding up of his Copy-hold-lands or Cuſtomary Eſtate into the hands of the Lord of the Manor, in the Court of the Manor, or unto his Bailiff, Reeve, or Steward, to ſuch Uſes and

for such Estates as are particularly mentioned in the Surrender it self, made by a Deed or Writing; or if it be by Word, in the presence of the Lord and Tenants in the Court of the Manor. And yet it hath been a great doubt and Question, whether of Copy-holds or Customary Estates, any words used to the Lord himself shall amount to make it a good Surrender.

Proofs.

Litt. 15. *b.* Book of Entries, 131. acc.

Vide Mr. *Littleton*, in his Chapter of Tenant by Copy, &c. *fol.* 15. *Ad hanc Curiam venit* A B, *& surrendidit in eadem Curia in manus Domini, &c. unum Messuagium, &c. ad usum* C D. *& heredum suorum, &c.*

But if the Surrender be made in Court into the hands of the Lord or his Steward, it must be to such a person or his Use who is *in esse* and capable of such a Surrender, or that may take Presenty by force of the Surrender; otherwise such Surrender, though it be an Actual Surrender made in the Court of the Manor to the Lord or Steward himself, is not good.

A Copy-holder in Fee surrendred his

his Copy-hold-lands into the hands of the Lord of the Manor, *Habendum* after his deceaſe to the Uſe of an Enfant *in Ventre ſa mier*, and if the ſaid Enfant died within age, then to the Uſe of *J S* and his Heirs. In this Caſe theſe Points were Reſolved. 1. If a Copy-holder in Fee doth ſurrender his Copy-hold-lands into the hands of the Lord, to the Uſe of himſelf and his Heirs, That in that Caſe, becauſe the Limitation of the Uſe to him who had it before was void, the Surrender thereof to the Lord himſelf was alſo void. 2. That the Surrender made to the Enfant *in Ventre ſa mier* was not good as an immediate Surrender, and to take effect immediately, as the intention of the Surrenderer was it ſhould, becauſe it was of a Free-hold, which could not begin at a day to come.

H. 7 Jac. B. R. Simpſon and *Southern's* Caſe. *H. 17 Jac. in B. R. Bambridge* and *Whitton's* Caſe acc.

But yet *Quere*, If the Surrender be made into the hands of the Lord, to the Uſe of the right Heirs of the Surrenderer, if the Lands ſhall not continue in the hands of the Lord till the death of the Copy-holder who made the Surrender, for the Court doubted of it, *Paſc.* 30 *Eliz.* in *Allen* and *Palmer's* Caſe.

Vid. P. 30 *Eliz. Allen* and *Palmer's* Caſe. *Leon.* part 1. 101.

A Surrender being then by the Copy-

holder himſelf, in the Court of the Manor, to the Lord, of his Copy-hold or Cuſtomary Lands; if then, upon the very Act done, the Eſtate be in the Lord, or in the Surrenderer, or in whom it reſteth, remaineth a Doubt. For Reſolution thereof, I humbly conceive the Law to be, and ſo it hath been Reſolved, That notwithſtanding ſuch a Surrender made, yet the Eſtate remaineth in the Copy-holder who ſurrendreth, and is not in the Lord, or in any other perſon whatſoever. But in caſe where the Copy-holder doth ſurrender his Copy-hold in the Court of the Manor to the Uſe of the Lord himſelf, (which he may doe) there, by ſuch a Surrender, the Land is immediatly veſted in the Lord without any other Act done or required, becauſe the Lord cannot take a Surrender, as to make thereof an Admittance unto himſelf.

Vid. Cro. part 1. in *Eriſh* and *Rive*'s Caſe, &c.

And to that purpoſe *Vide Eriſh* and *Rive*'s Caſe, where it was Reſolved, That if a Surrender be made by a Copy-holder of his Copy-hold-lands into the hands of the Steward of the Manor to the Uſe of the Steward himſelf, that Surrender is good without any farther Act, for the reaſon aforeſaid.

Having

Having thus shewed what will be a good Surrender of Copy-hold or Customary Lands by an actual Surrender in the Court of the Lord of the Manor, I shall now consider

SECT. II.

Whether a Copy-hold may be said to be surrendred by any Act, Words, or Agreement, made betwixt the Lord and the Copy-holder, or by the Copy-holder with a Stranger made in the Court, in the Presence of the Lord or his Steward.

I Do conceive generally, that no Act or Words of the Copy-holder can pass his Copy-hold in such a manner, as that the same shall be accompted to amount to a good Surrender of the same. But yet it rests upon a Difference. *Vid.* Leon. 1. part, 172. Penruddock and Newman's Case.

Proofs.

If a Copy-holder bargains and sells his Copy-hold by Deed of Bargain and Sale enrolled, though it be to the Lord of the Manor himself, it is void, and shall not amount to a Surrender.

If

If Tenant for life of Lands at the Common Law agrees with his Leſſor, or him in the Reverſion, that he ſhall have his Intereſt in the Land for the Rent of 20 *s. per annum*; this Agreement will not amount to a Surrender of his Land by the Common Law. *A fortiori*, If a Copy-holder, or other Cuſtomary Tenant, ſhall ſay to his Lord, or other perſon in the Court of the Manor, I agree to ſurrender my Lands; theſe words will not be a preſent or an expreſs Surrender, nor will they amount to ſo much as a Relinquiſhing of his Eſtate: for in truth it is not any thing in preſent, but an Act to be done *in futuro*: Like unto the Caſe put by *Wray* Chief Juſtice; *A* ſeiſed of the Manor of *D* demiſeth the ſame Manor at will; that it is no Leaſe. No more in the other Caſe ſhall it be a Surrender, or a Relinquiſhing of his Copy-hold or Copy-hold-eſtate. But yet notwithſtanding it will be agreed that in ſome caſes an expreſs and particular Agreement made by a Copy-holder with the Lord of the Manor for or concerning his Copy-hold-lands will amount to a Surrender of the ſame.

Tr. 31 *Eliz. in B. R. Sweeper* and *Randall's Caſe, Leon.* 1 part, 178.

The Caſe was, That the Lord of a Manor, pretending that a Copy-holder had

had forfeited his Copy-hold-lands, entred into a Communication with the Copy-holder concerning the same: Upon the Communication thereof had betwixt them, it was agreed, that the Copy-holder should pay unto the Lord the summe of 10 *l.* which he paid accordingly; and that in consideration thereof, the Copy-holder should have Election, whether he would have the Land assured unto him by Copy or by Bill, for the life of him and his Wife, or *durante vidnitate* of the Wife: who made his Election to have the Land by Bill. It was the opinion of the Justices in that Case, That this Agreement was a good Surrender of the Lands, and a good Estate thereupon vested in the Wife for her life.

M. 32 *Eliz. in C. B. Collam* and Sir *Hugh Portman's* Case, *Leon.* 1 part, 191.

A Copy-holder in Fee came into the Court of the Lord of the Manor, and took a new Estate of his Copy-hold-lands from the Lord to himself for life, and afterwards to his Wife for life, and after to his Son for life. It was a Question, whether this Act of the Copy-holder was the giving up and the relinquishing of his Estate of Inheritance in his Copy-hold, and did amount to a Surrender of his old Estate therein. It was agreed

M. 13 *Jac. B. R. Betfield* and *Adams* Case.

Vid. 29 *Eliz.* Co. 2. part, Lane's Case. agreed in this Case, That if a Copy-holder of Inheritance takes a Lease by Indenture for years of the Lord of his Copy-hold, that by that Act of his his Inheritance in his Copy-hold is gone and determined. But it seemed to be the better opinion of the Court, That although that this taking of a new Estate shall imply a Surrender, and be accounted as to some purpose to amount to a Surrender; yet in the judgment of Law it shall be but as a Surrender to his Use for life, and after to his Wife and Son for their several lives, and that still the Inheritance of the Copy-hold remains in him. But *Quere* this Case. For that *H.* 36 *Eliz. in Co. B. Rot.* 2640. in *Adams* and *Shepheard*'s Case, it seemeth to be adjudged to the contrary.

Vid. Colman and *Bedil*'s Case, *Anderson*'s Reports 199. acc. A Copy-holder said to his Lord, that he would not hold his Land longer by Copy, but by a Bill under the Lord's hand for his life, who made him such a Bill, which the Copy-holder accepted of. It was agreed by the Justices in that Case, That thereby his Copy-hold was determined.

SECT.

SECT. III.

Of Surrenders out of Court; and where Surrenders to the Steward, Deputy-ſteward, or into the hands of Tenants of the Manor, out of Court, ſhall be good, where not.

BY the general Cuſtome of the Realm a Copy-holder may ſurrender his Lands in the Court of the Lord of the Manor, or out of Court, to the Lord, by the hands of Tenants of the Manor: But a Surrender out of Court to the Lord, or by the hands of Tenants of the Manor, or of the Bailiff or Reeve, is not good without a ſpecial Cuſtome.

The Lord hath ſuch an abſolute Intereſt in his Manor, that he may hold a Court within his Manor at what time he pleaſeth: But he is not compellable by his Copy-holder to hold or call a Court to accept of a Surrender. But if he doth accept of ſuch a Surrender of his Copy-holder out of Court, the ſame is good, whether it be to his own Uſe, or to the Uſe of other perſons. And as the Lord may himſelf accept of a Surrender out of

of Court, ſo likewiſe may the Lord himſelf grant new Copies of the Lands out of Court, and ſuch Grants ſhall be good. But the Lord himſelf cannot hold his own Court for any of the purpoſes aforeſaid. But the Lord himſelf may give authority unto others to take Surrenders to the Uſe of others out of Court; and ſo may his Steward or Under-ſteward give Conditions to others to take the like Surrenders out of Court to others Uſes, which Conditions ſhall be in the nature of a *Dedimus poteſtatem*. And ſo it was Reſolved in a Caſe out of *Ireland*, referred to the Judges of *England*, to certifie their opinions therein; where the Caſe was, The Steward of the Court of a Manor in *Ireland*, being in *England*, ſent a Writ in the nature of a *Dedimus poteſtatem* to one who was in *Ireland*, to take a Surrender there of Copy-hold-lands: and the opinion of the Judges here, to whom the Caſe was referred to adviſe and certifie their opinions was, That ſuch a Surrender taken by *Dedimus* was good enough. But note, that in ſuch caſe it muſt be intended, that ſuch giving power to take a Surrender, if it be to be done, it muſt be alledged to be done either by Preſcription or Cuſtome:

ſtome: for that Surrenders generally taken out of Court muſt be by Cuſtome.

Proofs.

If the Under-ſteward hold a Court within the Manor, and grants Copies by Court-Roll, without the authority of the Lord or of the high Steward, the Grants are good. But contrary it is, if he doe it out of Court, as it ſeemeth. And there it is a *Quere*, if the high Steward out of Court may grant Lands by Copy. But it is clearly holden, that he cannot admit a Copy-holder upon a Surrender out of Court, without a ſpecial authority from the Lord ſo to doe. 2 E. 6. Br. *Tenant per Copie* 26.

A Deputy-ſteward may take a Surrender out of Court, if the Office be granted to the Steward and his ſufficient Deputies, or to be exerciſed by him and his ſufficient Deputies; as it was Reſolved 19 *Eliz.* in the Court of *Common-Pleas*. 19 *Eliz. in Co. B.*

The Lord of a Manor may retain a Steward by Word, and ſuch a Retainer ſhall be good untill he be diſcharged, and ſuch a Steward may take a Surrender out of Court, as it is holden in *Coke* 4. part, in the Lady *Holtroſt's* Caſe. And ſo was it Reſolved *Tr.* 41 *Eliz.* in *Harris* and *Jaye's* 8 *Eliz.* Dyer 248. *Co.* 4. part, *Holcroft's* Caſe.

Tr. 31 *Eliz. C. B. Blagrave* and *Wood's* Case, Godb. 142.

Faye's Case *in B. R.* But *Quere* of the first Point. For that *Tr.* 31 *Eliz. in Co. B.* in *Blagrave* and *Wood's* Case, the opinion of the Justices was, That a Surrender to a Steward who was by word onely, out of Court, was not good.

M. 17 *Eliz.* in *C. B.* by *Dyer* and *Mounson.*

In 17 *Eliz. in Co. B.* it was said by *Dyer* and *Mounson*, That without a Prescription a Surrender of Copy-hold-land could not be out of Court, nor an Admittance out of Court, neither to the Lord himself nor to his Steward. But in divers places it is used by Custome so to be. And then and thereupon the doing of Fealty and the paying of the Lord's Fine shall be presented by the Homage to be done at the next Court. And all these things they said are to be done by Custome. And in that Case it was said by the Lord *Dyer*, That a Surrender out of Court might be to the Lord himself, to go by the way of Extinguishment.

A Copy-holder in Fee did, according to the Custome of the Manor, surrender his Copy-hold-lands into the hands of two Tenants; but the Surrender was to the Use of *J S*, to take effect immediately after his death. In this case it was Resolved, That as unto the Surrender into the hands

of

of two Tenants, that might be good, although it was out of Court, by Custome. But because in that Case the Surrender was unto the Use of *J S*, to take effect immediately after the death of the Surrenderor, and a Free-hold cannot begin *in futuro*, or at a day to come, by the Common Law, and for that the Estates of Copy-holders shall be directed according to the Rules of the Common Law; for that cause onely the Surrender was holden to be void.

But although a Surrender out of Court may be good into the hands of Tenants of the Manor by Custome; yet untill such Surrender be presented by them in the Court of the Lord of the Manor, the Estate of the Lands doth remain in the Surrenderor, and nothing passeth thereby.

A Copy-holder in Fee did surrender into the hands of two Tenants, according to the Custome, to the Use of *A* and *B*, who thereupon entred into and upon the Lands, and paid the Rent to the Lord; but before any Court was kept for the Manor, the Tenants to whom the Surrender was made, as also the Copy-holder the Surrenderor, all of them died, and thereupon the Heir of the Copy-holder

M. 14 *Jac. B. R. Frosewell* and *Welshe's* Case, *Bridgeman* 32.

Surrenderor entred upon the ſaid *A* and *B*, and made a Leaſe for years of the Lands, which Leaſe was warranted by the Cuſtome. In that Caſe it was Reſolved, That the Leaſe for years was well made, becauſe that before ſuch time that the Preſentment was made in Court of the Surrender, the Intereſt of the Copy-holder did remain in the Surrenderor, and his Right deſcended unto and upon his Heir, and he might take & receive the Rents and Profits of the Lands; for that no perſon can have a Copy-hold or a Copy-hold-Eſtate, but ſuch a perſon who comes into the ſame by the Cuſtome of the Manor, *viz.* by Admittance of the Lord, which in this Caſe *A* and *B* did not doe. But in that Caſe it was doubted by the Juſtices, but not Reſolved, Whether the Acceptance of the Rent by the Lord at the hands of the ſaid *A* and *B* did amount to an Admittance or not.

M. 9. *Jac.* *Cro.* 2. part, *Porter* and *Porter's* Caſe.

There were two Joynt-tenants in Fee of Lands which were holden by Copy. One of them, according to the Cuſtome, ſurrendred into the hands of two Tenants to the Uſe of his laſt Will, and afterwards he made his Will, and thereby deviſed the Lands. In that Caſe it was holden by

by the Justices, That because the said Surrender was presented by the Tenants in the Court of the Lord, that the said Surrender should bind the Survivor; for that it shall have a relation to the first time of the Surrender. But if in that case the Copy-holder who made the Surrender had died before the same had been presented, then the Copy-hold had survived to the surviving Joynt-tenant.

Two Coparcenors, Copy-holders, were in possession; the one did surrender her Reversion in the Moyety after her decease. It was adjudged a void Surrender, because a Free-hold could not commence *in futuro*, as well of Copy-hold-lands as of Free-hold-lands. *P. to Jac. B. R. Godb. 141.*

A Copy-holder surrendred a Messuage and 20 Acres of Lands into the hands of two Tenants out of Court, to the Use of *J S* and his Heirs, upon Condition, that if he paid *J S* 100*l.* before such a day, the Surrender to be void. Before the day of payment he surrendred one Acre, parcel of the 20 Acres, unto *J D* and his Heirs, and afterwards he performed the Condition by paying the 100*l.* and afterwards in Court he surrendred the said Messuage and 20 Acres of Lands in- *M. 8 Jac. in B. R. Cro. 3. part, Burgoyne and Spurling's Case.*

to the hands of the Steward, to the Uſe of *J N* and his Heirs. It was found by the Jurours that the firſt Surrender made to *J S* was never preſented, but the two laſt Surrenders were preſented. In this Caſe it was Reſolved, That by the Conditional Surrender nothing paſſed, untill it was preſented; but the Intereſt, Right and Poſſeſſion remained in the Copy-holder who made the Surrender, ſo as he might transfer it to whom he thought good. For although it was a Surrender into the hands of Tenants, and ſo according to the manner of the Surrender the ſame was good by the Cuſtome; yet becauſe the ſaid Surrender into the hands of Tenants was but an Inchoation of the Caſe to whoſe Uſe the Surrender was made, which had no farther perfection or proſecution, but became void by the performance of the Condition, the firſt of the two laſt Surrenders preſented, *viz.* the Surrender to the Uſe of *J D* and his Heirs, ſtood good, and the laſt Surrender to the Uſe of *J N* and his Heirs took no effect.

Coke 9. part, *Comb's* Caſe.

A Copy-holder in Fee made a Letter of Attorney to two Tenants of the Manor, to ſurrender his Copy-hold out of Court

Court unto the Use of *J S* and his Heirs: They surrendred the same accordingly, and at the next Court brought in the Surrender into Court, (but no Custome was found to warrant such a Surrender.) Notwithstanding in that Case it was Resolved, 1. That it was a good Surrender, because he might doe it *de communi jure* without alledging any Custome. 2. When the Tenants shewed the same in Court, and the Authority which was given to make the Surrender, all which they had done was Resolved to be good, and legally done.

SECT. IV.

Where, although Surrenders are made to the Lord or to Tenants out of Court by Custome, yet nothing passeth out of the Copy-holder before Admittance: And what shall be a good Admittance in such case, what not.

ADmittance is the life and perfection of the Copy-holder's Estate, and before Admittance the Tenant is not a perfect Copy-holder.

Proofs.

M. 23 *Car. B. R. Baker* and *Denham's* Case.

The Custome of a Manor was, That a Copy-holder might surrender his Copy-hold out of Court to the Use of another; the party to whose Use it was, to be admitted at the next Court. Such a Surrender was made, but before the next Court *Cestuy que use* died, and so was not admitted. It was Resolved in this Case, That he was not a Copy-holder within the Custome; for by the Surrender before Admittance the Surrenderee hath no possession, and the Heir is in by Discent, and holds by the Copy of his Ancestor, and so the *Cestuy que use* is not a perfect nor compleat Copy-holder. And it may be compared to the Case where a man makes a Feoffment in Fee of Lands, and makes Livery within the View; it is no perfect Livery till he doth enter into the Lands, but the Feoffor may punish a Trespass there done in the interim, for it is but *inchoatum* untill he enter. And so it is in case of a Copy-holder; the Surrender is but *quasi inchoatum*, as before, till he be admitted to the Copy-hold, *Vid. Frosswell's* Case before.

In

In 26 *Eliz.* the Question was, Whether the Copy-holder might have an Action upon the Case against the Lord for not holding his Court, and not admitting of him to whom a Surrender was made according to the Custome of the Manor. It was Resolved in that Case, That the Copy-holder himself might have the Action. But in that Case it was Resolved, That he to whom the Surrender was made, untill Admittance, by force of the Surrender had nothing; it was onely an Act begun, and not perfected; and therefore in such case he could not maintain the Action of the Lord for not admitting of him.

26 Eliz. Galloway's Case vouched in *Bulstr.* 3. part, 217.

A Surrender of a Copy-hold is like to the Induction into a Benefice: before Induction there is no Possession; so before Admittance there is no Possession.

A Copy-holder, according to the Custome, did surrender out of Court into the hands of Tenants to the Use of *J S* and his Heirs; which Surrender was delivered into the Court by the said Tenants and there presented; which was accepted of by the Steward of the Manor, and an Entry made thereof in the Court-Roll, and a Copy of the Surrender was

M. 12 *Jac. Robinson* and *Green's* Case, *Bridgeman* 82, 83. *Bulstr.* 3. part, 238. acc.

delivered unto *J S*; and in the Copy it was, *viz. Compertum eſt per Homagium*, that the Surrender was to *J S* and his Heirs. It was the opinion of the Court in this Caſe, That none of theſe colourable things did imply a perfect Admittance to the Copy-hold. For 1. The Acceptance of the Preſentment by the Steward from the Homage was no more then what he was bounden to doe as being Judge of the Court. 2. The Entry of it in the Roll was but an Office of Duty, being but an Evidence for the Lord, as alſo for him to whoſe Uſe the Surrender was; and ſo was the delivery of the Copy to *J S*, the *Ceſtuy que uſe*. But none of theſe things did imply the Conſent or Will of the Lord, that the *Ceſtuy que uſe* ſhould be admitted or have the Lands according to the Surrender; and all theſe things together do not imply any Admittance, for all of them may be done, though no Admittance be in the caſe.

M. 6 Jac. in B. R. Wilſon and *Weddall's* Caſe, *Triv. 144.*

Note, It was Reſolved in the Court of *King's Bench*, That if a Surrender be of a Copy-hold to *J S*, it is of no effect untill he be admitted Tenant: and if before Admittance *J S* doth ſurrender the Land unto another, a Stranger, who is ad-

admitted, yet nothing passeth to the Stranger by this Admittance of the Stranger.

SECT. V.

Where some things, and what things, may be done by the Copy-holder or his Heir before Admittance.

Proofs.

1. THE Heir of a Copy-holder may enter and have an Action of Trespass before Admittance. 2. A *Possessio Fratris* or *Sororis* may be of a Copy-hold before Admittance. 3. A Discent shall not bind the Heir of a Copy-holder. 4. He may surrender unto a Stranger before Admittance. *Co. 4. part, Clark and Penyfather's Case.*

A Copy-holder in Fee had Issue two Daughters by divers Women, and died seised; the Daughters entred, and took the Profits many years; and before Admittance, the eldest Daughter died without Issue, and afterwards the youngest Daughter was admitted to the whole Land, as sole Heir to the Father. In this Case it was holden, That the possession of the eldest Daughter, though before Ad- *Vid. 12 Eliz. Dyer 291.*

Admittance, ſhould make her Siſter, though of the half bloud, inheritable to the Land.

34 Eliz. in Co. B. Coke 4. part, 23. Brown's Caſe acc.

If a Copy-holder in Fee by Licence maketh a Leaſe for years, and the Leſſee entreth, the Copy-holder having a Son and a Daughter by one Woman, and a Son by another; the Land ſhall diſcend to the Daughter of the whole bloud, although that the Son died, and was not admitted to the Copy-hold as Heir to his Father. And that that ſhould be *Poſſeſſio Fratris* of a Copy-hold before Admittance.

40 Eliz. in B.R. Arnold and George's Caſe, Telv. 16. acc.

If a Copy-holder doth ſurrender to a Stranger, and the Steward will not admit him, and the Stranger enters, and holds the Land; if the Lord bring Treſpaſs againſt him before Admittance, he may plead Not guilty, and his Plea ſhall be good, and it ſhall be found againſt the Lord, becauſe he is *particeps criminis* to the Admittance, becauſe it ſhall be intended, that the Lord would not ſuffer the Steward to admit him to the Copy-hold.

Tr. 2 Jac. B.R. Joyner and Lambert's Caſe, Cro. 2. Part, 36.

A Copy-hold was ſeized by the Lord of the Manor, and he granted it to another in Fee, who died, and his Heir was admitted; then the firſt Copy-holder died,

ed, and his Heir entred, and surrendred unto a Stranger in Fee. It was Resolved in that Case, That the Entry of the Heir was lawfull, though he was not admitted to the Copy-hold-estate, and the Discent of the Land to the Heir of the Grantee of the Lord should not bind him. And farther it was Resolved in that Case, That the Heir of the Copy-holder being in the Land, his Surrender of the Land unto a Stranger was good before his Admittance.

SECT. VI.

Where the Lord is but an Instrument to convey the Copy-hold by Admittance onely, and that the Surrenderee is in by the Copy-holder, and not by the Lord.

ALthough generally (as before is said) a Copy-holder cannot enter and have Seisin of the Land without the Admittance of the Lord, no more then a Parson or Prebend can have Seisin, or be full Incumbent, till the Arch-deacon hath inducted him, or the Dean and Chapter enstalled him: yet the Lord is but an Instrument used for the settling of the Copy-hol-

Vide Plow. *Com.* 421. in *Hare* and *Bickley's* Case.

py-holder in his Copy-hold, and to transfer the Land *ſecundùm formam & effectum Surſumredditionis*, and the Eſtate, Right and Intereſt in the Copy-hold doth not paſs as from the Lord; but upon the Admittance made by the Lord the Copy-holder is in by him who made the Surrender, and by the Cuſtome, and ſeiſed of the Copy-hold *ſecundùm Conſuetudinem Manerii*, &c.

Proofs.

M. 40 *Eliz.* B.R. *Pay* and *Browne's* Caſe, *Cro.* 1. part.

The Lord of a Manor demiſed Copy-hold of Inheritance to *A*, upon Condition that he ſhould pay to *B* 20 *s.* yearly during his Minority, and 100 *l.* at his full age. *A* paid not the 20 *s.* but ſurrendred the Land to the Uſe of *P* and his Heirs. The Lord admits him. *B* attains his full age, and the 100 *l.* is not paid. The Lord enters for the Condition broken, and grants the Land by Copy to *B*. *P* enters upon him. It was holden in this Caſe, That his Entrie was lawfull, for that he to whoſe Uſe the Surrender was made comes in by him who ſurrendred, and not by the Lord.

A Copy-holder in Fee ſurrendred his

his Lands into the hands of the Lord by the hands of Tenants, according to the Cuſtome, without expreſſing to whoſe Uſe it ſhould be. At the next Court he was admitted *Habendum* to him and his Wife in tail. It was objected, That no Uſe being expreſſed, the Surrender was void, and the Admittance not good, to paſs an Eſtate to the Wife not being named in the Premiſſes, but in the *Habendum* onely. It was Reſolved, 1. The Surrender was good, for it ſhall be intended, that the Surrender generally made was to ſuch Uſe as was ſpecified in the Admittance; and the Lord was onely as an Inſtrument put in truſt to convey the Eſtate, and make ſuch Admittance as he who ſurrendred would have him to make. 2. That the Wife ſhould take by the Admittance, though ſhe was not named in the Premiſſes, but in the *Habendum* onely.

Tr. 15 *Jac.* B. R. Brook's Caſe, Poph. 125.

If a Copy-holder ſurrendreth his Lands to the Uſe of *J S*, the Lord hath but a Cuſtomary power to make the Admittance *ſecundùm effectum & formam Surſumredditionis*. And if in ſuch caſe the Lord grants the Land to *J S* and a Stranger, all ſhall enure to *J S*, and nothing to the Stranger. And if the Copy-holder doth

33 *Eliz. Co.* 4 part, *Weſtwick's* Caſe.

doth ſurrender his Lands without a Condition, if the Lord doth admit the Tenant upon a Condition, the Condition is void; for that after the Admittance the Surrenderee is in by him who made the Surrender, and not by the Lord.

28 *Eliz.* Co. 4. part, *Bunting's* Caſe.

A Copy-holder ſurrenders to the Uſe of another; the Lord admits him to hold to him and his Heirs: yet he ſhall have but an Eſtate for life, for that after the Admittance he is in by him who made the Surrender, and not by the Lord.

Coke 8. part, in *Swayne's* Caſe.

The Cuſtome of the Manor was, That a Copy-holder for life might take Timber to repair: The King made a Leaſe of the Manor, excepting Woods and Underwoods and Trees: The Leſſee for years of the Manor grants a Copy-hold upon which were Timber-trees to another for life, who cuts Timber to repair. It was Reſolved, That in this Caſe, notwithſtanding the Severance and Exception, the Grantee ſhould have the Trees, for that the Eſtate of the Copy-holder who comes in by a voluntary Grant is in by the Cuſtome, and the Lord is but an Inſtrument to make the Grant.

Co. 4. part, in *Taverner's* Caſe.

When a Copy-holder ſurrenders to the Uſe of another, and the Lord admits him;

now

now he who is admitted is in by him who makes the Surrender. For in a Plaint in the nature of a Writ of Entry in the *Per*, he shall be supposed to be in the *Per* by him who made the Surrender, because the Lord is but an Instrument to make the Admittance; and he who is admitted shall not be subject to any Charges or Incumbrances of the Lord, for the Lord hath but a Customary power to make the Admittance *secundùm effectum sursumredditionis*, as before is said.

A Copy-holder surrenders to the Use of *J S*; the Lord refuseth to admit him: he cannot enter, unless there be an especial Custome to warrant it; but if there be, then he may enter. *M. 37 Eliz. Cro. I. part, Berry and Green's Case.*

SECT. VII.

Where the Admittance of the particular Tenant shall be the Admittance of him in the Remainder.

Proofs.

A Copy-holder in Fee by Licence made a Lease for years; the Lessee enters; the Copy-holder, having Issue a Son and a Daughter by one Woman, and a Son by another, *M. 24 Eliz. Co. 4. part, Browne's Case.*

another, died; the eldeſt Son died before Admittance. In this Caſe it was Reſolved, (amongſt other things) That the Admittance of Tenant for life is the Admittance of him in the Remainder, but not to bar the Lord of his Fine, which he ought to have by the Cuſtome.

P. 36 Eliz. B.R. Coke 4. part, Fitch and Huckley's Caſe.

The Father a Copy-holder in Fee made a Surrender to the Uſe of himſelf for life, and after to the Uſe of his Son for life, and after to the Uſe of his laſt Will. The Father was admitted, and died: The Lord pretending a Forfeiture entred, and granted the Copy-hold to a Stranger. Reſolved, That the Admittance of the Tenant for life was the Admittance of him in the Remainder; and then the Land could not veſt in the Grantee of the Lord.

Tr. 36 Eliz. B.R. Deal and Higden's Caſe, Moore 358.

It was Reſolved by the Juſtices, That the Admittance of Tenant for life of a Copy-hold is the Admittance of him in the Remainder, becauſe he is to pay his Fine which is intire, and no Fine is due to be paid by him in the Remainder to the Lord: but otherwiſe it is of him in the Reverſion.

M. 39 Eliz. B. R. Cro. 2. part, Gippin and Bamnye's Caſe.

A Copy-holder ſurrendred to the Uſe of one for life, the Remainder to another

in

in Fee: Tenant for life was admitted: He in the Remainder ſurrendred to the Uſe of *J S*; which Surrender the Lord accepted of, and admitted him, and then the Tenant for life died. It was holden in this Caſe, That the Heir of *J S* ſhould have the Land; for that the Admittance of the Tenant for life was the Admittance of him in the Remainder; and alſo becauſe the Acceptance of the Lord was *quaſi* an Admittance to him in the Remainder.

A Copy-holder in Fee ſurrendred to the Uſe of his Wife for life, the Remainder to his younger Son in Fee, and died: The Wife was admitted, but the younger Son refuſed to be admitted during the life of his Mother, but afterwards, without other Admittance, he ſurrendred to the Uſe of *J S*. It was Reſolved, That the Admittance of the Mother Tenant for life was the Admittance of the younger Son in the Remainder, becauſe they made but one Eſtate. *Tr. 2 Jac. B.R. Auncelme* and *Auncelme's* Caſe, *Cro.* 2. part.

A Copy-holder had Iſſue 3 Sons, *B*, *C*, and *D*, and ſurrendred to the Uſe of his laſt Will, and thereby deviſed the ſame to his Wife for life, the Remainder to *C* and the Heirs of his body: The Wife di- *Hil. 31 Eliz. B.R. Bullein* and *Graunt's* Caſe, *Leon.* 1 part, 1941

ed after Admittance, and the Lord granted the Copy-hold to *D* in Fee, who surrendred to the Use of *J S* for life, and after died without Issue: *B* the eldest Son entred. It was adjudged, That his Entry was lawfull, and that Admittance of him was not necessary; for that if a Copy-holder surrendreth to the Use of one for life, he in the Reversion or Remainder may enter without any new Admittance.

SECT. VIII.

By what and whose Act, either of the Law, of the Copy-holder himself, or of the Lord, severally or all together, the Copy-hold-land or Estate shall be gone, determined, or extinguished; and where suspended onely.

HAving in the Sections before declared where a Surrender and Admittance thereupon, either by the Lord or his Steward in Court, or to them, or into the hands of Tenants out of Court, shall be good, and where not: Let us now look upon this Division, and see in what case the Copy-hold or Copy-holder's Estate

ſtate or Intereſt ſhall be ſaid to be gone, determined, or extinguiſhed; and by what and whoſe Act it was or may be determined. Firſt, It may be determined by the Act of the Lord himſelf. 2. By the Act of the Copy-holder. 3. By Acts of them both joyned together. And laſtly, by the Act of the Law. All which will evidently appear by the Judgments, Reſolutions and Precedents after enſuing.

Proofs.

The Lord by his Act cannot, without the concurrent Act of the Copy-holder himſelf, determine the Eſtate and Intereſt which the Copy-holder hath in his Copy-hold. And therefore the Severance of the Free-hold and Inheritance of the Land holden by Copy of Court-Roll (being done by the Act of the Lord) doth not determine the Copy-holder's Eſtate, or extinguiſh the Copy-hold. For although that the Eſtate of the Copy-holder be but an Eſtate at will, *viz. ad voluntatem Domini ſecundùm Conſuetudinem Manerii*; yet Cuſtome hath ſo eſtabliſhed the Eſtate of the Copy-holder, that he is not removeable at the

Co. 2. part, 17. in *Lane's* Caſe.

Co. 4. part, 21. in *Brown's* Caſe.

will of the Lord, ſo long as he performs the Cuſtomes and Services.

If a Copy-holder will joyn with the Lord in a Deed of Feoffment of the Manor, there, by that Act of them both, the Copy-hold is extinct; as it was ſaid by the Lord *Anderſon* Chief Juſtice, *P. 24 Eliz. in Co. B.*

Vid. Cro. 1. part, 5. acc. A Feme-ſole was Lady of a Manor, to which were divers Copy-holders: One of the Copy-holders did intermarry with the Seignioreſs of the Manor. It was the opinion of the Juſtices, That the Intermarriage was onely a Suſpenſion of the Copy-hold, and not an Extinguiſhment of it. But afterwards they joyned in ſuffering a common Recovery of the Land; and upon that their Act it was Reſolved, that the Copy-hold was extinguiſhed.

H. 26 Eliz. in Co. B. Cro. 1. part, Stockbridge's Caſe. Husband and Wife Copy-holders in Fee to them and their Heirs: The Huſband for Money obtained an Eſtate of Free-hold to him and his Wife, and the Heirs of their bodies. It was Reſolved in that Caſe, That by the Acceptance of the new Eſtate the Copy-hold was determined.

M. 29 Eliz. in C. B. Godb. 101. If a Copy-holder doth ſurrender to him who hath a Leaſe for years of the Ma-

Manor to the Use of the same Lessee, by that Act of his the Copy-hold-estate is extinct.

The Lord of a Manor sold the Free-hold of a Copy-hold unto another, and so it was divided from the Manor; and afterwards the Copy-holder did release to the Purchasor. It was the opinion of the Justices, That by this Release the Copy-hold was gone and extinct. But in that Case it was said, That if a Copy-holder be ousted, so as the Lord of the Manor is disseised, and the Copy-holder releaseth to the Disseisor, *Nihil operatur* by such Release. *P. 30 Eliz. B. R. Leon. 1. part, 102, Wakefield's Case.*

A Copy-holder had common by Usage in the Wastes of the Lord as to his Messuage and Lands belonging: The Copy-hold comes to the Lord, who after grants the same to the Copy-holder *cum pertinentiis*. In this Case it was holden, That these words, *viz.* (*cum pertinentiis*) could not create a new Common, and the Common first holden was by Custome annexed to the Customary Estate, and was absolutely extinguished.

If there be Lessee for life, the Remainder for life of a Copy-hold, and the first Tenant for life purchaseth the Free-hold *M. 9 Jac. in C. B. adjudge. acc.*

of the Copy-hold, and afterwards levieth a Fine thereof, and five years pass: It was adjudged, That in that Case by the Fine levied the Copy-hold was not gone nor destroyed, and that this Fine was not a Bar to him who was in Remainder in life of the Copy-hold.

P. 8 Jac. in Co. B. Moore and Rideval's Case.

There was Tenant for life of a Copy-hold: The Lord granted the Reversion of the Copy-hold after the determination of the particular Estate to another for 20 years: Afterwards the Copy-holder, who was Tenant for life, by Deed made a Lease for life of his Copy-hold, and made Livery, which was a Forfeiture of his Copy-hold-estate. It was the opinion of the Justices in that Case, That this Act of the Tenant for life was not a Determination or an Extinguishment of the Copy-hold: For although it was a Determination of the particular Estate of the Copy-holder, and that he in the Remainder might enter; yet the Land remained Copy-hold as it was before.

3 Jac. in B. R. Lastmor and Averie's Case, Cro. 2. part.

The Custome of a Manor is, That if a Copy-holder in Fee dieth seized, his Wife shall hold the Land during her life as Free-Bench: The Lord enfeoffeth the Copy-holder of the Land. It was adjudg-

judged, That ſhe ſhould not hold the Land for her life as Free-Bench, but it was gone by the Purchaſe. Contrary, if the Lord had infeoffed a Stranger of the Land.

C purchaſed a Copy-hold from *A* Lord of the Manor, to him and his Wife and their Child for their lives: Afterwards *A* by Indenture granted the Freehold to *B* for life, rendring Rent, and made Livery: And afterwards *A* levied a Fine *ſur Conuſans de droit*, &c. to *C* of the ſame Lands, who afterwards accepted of the Rent from *B*. It was holden in that Caſe, That by the Acceptance of the Rent from *B* the Copy-hold of *C* was deſtroyed and determined. *Vid.* 30 H. 8. Dyer, acc.

Note, If a Copy-holder takes a Leaſe for years of his Copy-hold-lands, the Copy-hold is determined: and ſo it is, if the Lord leaſeth a Copy-hold for years which is eſcheated, the Copy-hold is determined. But if a Copy-holder purchaſeth the Manor, the Copy-hold is not determined, but ſuſpended, becauſe there is no Interruption, but it is able to be granted again, becauſe by the Cuſtome it ſufficeth that it hath been demiſed and demiſable. *M.* 15 & 16 *Eliz. in Co.* B.

SECT. IX.

Of Forfeitures of Copy-holds and Copy-hold-eſtates; and what Acts or things done by the Copy-holder ſhall amount unto or be adjudged a Forfeiture of the Copy-holder's Eſtate, what not.

THE general Grounds of Forfeitures of Copy-holds, or of their Eſtates, are declared in the former part of this Treatiſe, unto which I ſhall refer you. That which I ſhall now ſay is but by way of Amplification of thoſe Grounds, with ſome Judgments and Authorities in ſeveral Caſes upon ſundry differences. All Forfeitures may be reduced unto theſe Heads: Either voluntary Acts done to the prejudice of the Lord, or negligent or wilfull refuſall to doe and pay his Duties and Services to the Lord, which by the Laws and Cuſtomes of the Manor he ought to doe and perform.

Proofs.

Coke 4. part, Murrel's Caſe. A Copy-holder makes a Leaſe either for life or years of his Copy-hold-lands, which

which is not warranted by the Custome of the Manor: now although such Lease shall be a good Lease as betwixt the Copy-holder and his Lessee, and he shall not avoid his own Lease; yet as unto the Lord it is a Forfeiture of the Copy-hold and of his Estate, and the Lord shall take advantage of such Forfeiture, and may enter upon the Lands leased.

So if a Copy-holder makes a Lease of his Copy-hold for 3 years by word, to begin at *Michaelmas* or at a day to come; although it is a good Lease as betwixt the parties to it, yet it is a Forfeiture of the Copy-hold to the Lord; and so it was holden *Hil.* 37 *Eliz.* in *East* and *Harding*'s Case. *H.* 37 *Eliz.* *East* and *Harding*'s Case.

A Copy-holder of a Manor made a Lease of his Free-hold-lands for 10 years, and, to avoid a Forfeiture, made a Lease of his Copy-hold-lands for one year; but covenanted with his Lessee, that he should enjoy the Copy-hold-lands *de anno in annum*, during the 10 years. It was the opinion of the Justices in this Case, That because this Demise of the Copy-holder was but for one year, and so warranted both by Law and Custome, and it was but onely a Covenant on the part of the Lessee that he *P.* 10 *Jac.* in *C. B.* the Lady *Montague*'s Case, *Croke*, part 2. acc.

he ſhould hold it for a longer time, that this was no Forfeiture, although the Lord pretended the ſame to be a Forfeiture.

M. 27 Eliz. in Co. B. by Anderſon. Moore 184.

The Lord licenſed his Copy-holder to make a Leaſe of his Copy-hold-lands for 21 years, to begin at *Michaelmas* following: The Copy-holder by Indenture made a Leaſe accordingly; but afterwards, before *Michaelmas*, he made another Leaſe by Indenture to another perſon, to begin at *Michaelmas* following. It was the opinion of the Lord *Anderſon* Chief Juſtice, *Mich. 27 Eliz. in Co. B.* That the making of this ſecond Leaſe, being without the Licence of the Lord, was a Forfeiture of his Copy-hold.

M. 15 Jac. in B. R. Woodridge and Banburie's Caſe, Cro. 2. part.

A Copy-holder for life hath Licence of the Lord to make a Leaſe for 3 years, if he ſo long live, and he makes a Leaſe for 3 years without ſuch Limitation. It was holden to be no Forfeiture of his Eſtate in the Copy-hold, becauſe the Law makes ſuch a Limitation to the Eſtate which he makes, that it ſhall continue but during his life. But if he had been a Copy-holder in Fee, it had been a Forfeiture of his Eſtate to have made ſuch an abſolute Leaſe, becauſe he had done more

then

then he was licensed to doe by the Law. And so it was adjudged in *Hall* and *Arrowsmith's* Case, which see in *Popham's* Reports, 185.

If a Copy-holder without Licence of the Lord doth erect a new House upon his Copy-hold-lands, some opinion hath been, That the same is a Forfeiture of his Estate. But I doubt much of that Case, because the Act done is for the benefit and advantage of the Lord, and not to his Prejudice. *Quere* of it. *M. 8 Jac. in B R. Ward's Case.*

SECT. X.

Where deniall or refusall to pay his Rent, Fine, or to doe his other Customes and Services, shall be a Forfeiture of his Copy-hold and Copy-hold-estate, and where not.

Proofs.

A Copy-holder in Fee was seised of Land rendring Rent at *Michaelmas* and our *Lady-day*. The Lord at the last instant of the day of payment demanded the Rent upon the Land, and the Copy-holder was not there, nor any for him, to pay it. It was a Question, if his Non-payment of the Rent was a Forfeiture of his *H. 33 Eliz. Crispe* and *Fryer's* Case in *Moore*.

he should hold it for a longer time, that this was no Forfeiture; although the Lord pretended the same to be a Forfeiture.

M. 27 Eliz. in Co. B. by Anderson. Moore 184.

The Lord licensed his Copy-holder to make a Lease of his Copy-hold-lands for 21 years, to begin at *Michaelmas* following: The Copy-holder by Indenture made a Lease accordingly; but afterwards, before *Michaelmas*, he made another Lease by Indenture to another person, to begin at *Michaelmas* following. It was the opinion of the Lord *Anderson* Chief Justice, *Mich. 27 Eliz. in Co. B.* That the making of this second Lease, being without the Licence of the Lord, was a Forfeiture of his Copy-hold.

M. 15 Jac. in B. R. Worlidge and Banburie's Case, Cro. 2. part.

A Copy-holder for life hath Licence of the Lord to make a Lease for 3 years, if he so long live, and he makes a Lease for 3 years without such Limitation. It was holden to be no Forfeiture of his Estate in the Copy-hold, because the Law makes such a Limitation to the Estate which he makes, that it shall continue but during his life. But if he had been a Copy-holder in Fee, it had been a Forfeiture of his Estate to have made such an absolute Lease, because he had done more

then

then he was licensed to doe by the Law. And so it was adjudged in *Hall* and *Arrowsmith's* Case, which see in *Popham's* Reports, 185.

If a Copy-holder without Licence of the Lord doth erect a new House upon his Copy-hold-lands, some opinion hath been, That the same is a Forfeiture of his Estate. But I doubt much of that Case, because the Act done is for the benefit and advantage of the Lord, and not to his Prejudice. *Quere* of it. *M. 8 Jac. in B R. Ward's Case.*

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his Copy-hold or not. And the better opinion of the Court seemed to be, That it was a Forfeiture, because the Copy-holder was to take peremptory notice of the day of payment of his Rent, and his not being there seemed to imply that it was a voluntary Denial, or Refusal at the least, of doing the same. But *Quere* of it; for it was Resolved in another Case, *Tr.* 21 *Jac. in C. B.* That not payment of Rent, or of the Fine upon Admittance to his Copy-hold, was no Forfeiture of his Copy-hold-estate, without there was some expres verbal Denial of it, which there was not in this Case.

Tr. 21 *Jac. in Co. B.*

A Copy-holder seised by force of several Copies of *Black-acre* by the Rent of 4 *d*, *White-acre* by the Rent of 4 *d*, and *Green-acre* by the Rent of 6 *d*, denied the Rent of *Black-acre*. In that case it was holden to be a Forfeiture of that Acre, but no Forfeiture of the other two Acres, because, although they were all in one hand, yet because they were holden by several Rents, the Forfeiture of the one Acre cannot be the Forfeiture of the other two Acres.

M. 37 *Eliz. B. R. Taverner* and Lord *Cromwel's* Case, *Cro.* 1. part.

No Fine is either due or payable to the

the Lord, but either upon a Discent, or upon an Admittance. But if such a Copy-holder upon his Admittance shall make an absolute Refusal to pay the Fine to the Lord, the same is a Forfeiture of his Copy-hold and of his Estate. But there such a Fine must be reasonable. For if the Fine assessed by the Lord be an unreasonable Fine, (of which the Judges shall determine) a Refusal or Denial of the Copy-holder to pay the same shall be no Forfeiture of his Estate or Copy-hold.

Vid. Coke 4. part, 28. in Sands Case.

Note, It was Resolved by the Justices, That if the Lord demandeth an unreasonable Fine of his Copy-holder, and he refuseth to pay it, it is no Forfeiture; otherwise where it is a reasonable Fine. If a Fine be certain, the Tenant is to bring it with him to the Court, and to pay it before Admittance; and if he be not ready to pay it, it is a Forfeiture, and so it was adjudged. But what shall be a reasonable Fine or an unreasonable Fine, ought to be determined *per arbitrium boni viri*; and the Court and Justices of it shall be Judges of the Reasonableness of the same, if it be pleaded that the Fine demanded by the Lord, or the Dis-

M. 43 Eliz. Dalton and Hamond's Case, Moore 622.

Diſtreſs for it, be unreaſonable or exceſſive.

M. 6 Jac. in C. B. Willowes and *Willowes* Caſe, *Coke* Select Caſes.

A Copy-holder ſeiſed of Copy-hold-lands of the yearly value of 53 *s.* 4 *d. per annum*, and no more, ſurrendred them into the hands of the Lord of the Manor to the Uſe of *J S* and his Heirs: The Cuſtome of the Manor was, That upon the Admiſſion of any perſon a reaſonable Fine ſhall be aſſeſſed by the Lord or his Steward to be paid. The Steward at the Court holden for the ſaid Manor aſſeſſed a Fine of 5 *l.* 6 *s.* 8 *d.* (the value of the Lands for 2 years) to be paid by *J S* for a Fine; which Fine being requeſted of him by the Lord to pay, he refuſed to pay the ſame; whereupon the Lord entred upon the Lands for a Forfeiture. In which Caſe theſe Points were Reſolved. 1. That if the Fine aſſeſſed had been reaſonable, yet a certain time was to be ſet, and a certain place where it ſhould be paid: for it ſhall not be intended that the Tenant hath ſufficient Money about him to pay a Fine which is uncertain to be aſſeſſed. 2. That the Fine aſſeſſed by the Steward was an unreaſonable Fine: and 3. That the Refuſal was no Forfeiture.

If

If the Fine of a Copy-holder be assessed by the Lord or his Steward, be the Fine reasonable or unreasonable, the Lord must demand the Fine of the Copy-holder before he can enter upon the Copy-hold for not payment thereof, and the Reasonableness or Unreasonableness thereof shall be adjudged by the Court.

H. 13 *Jac. C.B. Denny* and *Lemon's* Case, *Hob.* 135. *Co.* 11. part, *Godfrie's* Case acc.

Lands being Customary Lands, and by the Custome discendable to the younger Son, the Father died, the younger Son being of the age of 2 years: Thirty years incurred after the death of the Father, and no Court had been holden for the Lord of the Manor: But in the interim the younger Son had made a Lease of the Lands to a Stranger; and after, at the next Court holden for the Manor, he came into Court and prayed to be admitted, but the Steward refused to admit him. It was holden in this Case, That the Lease made by him was good, and that there was no negligence in him to be admitted to the Copy-hold-estate; for that it was holden in this Case, That if a Copy-holder dieth, his Heir within age, he is not bound to come at any Court during his Nonage to pray Admittance, or to tender his Fine for the same; and

P. 30 *Eliz. B.R. Aumory* and *Eves* Case, *Leon.* 1 part, 102.

if

if the death of the Anceſtor be not preſented, nor Proclamations made that the Heir come in to take up the Land and pay his Fine, the Heir ſhall not forfeit his Land for ſuch neglect, although he be of full age.

4 *Eliz.* Dyer 211. If the Homagers in a Court-Baron being Copy-holders do refuſe to make their Preſentments, it is a Forfeiture of their Copy-holds: and ſo it was Reſolved to be by both the Chief Juſtices in the *Star-Chamber* in the Earl of *Arundel's* Caſe.

H. 13 *Jac. B. R. Belfield* and *Adams* Caſe, *Bulſtr.* 3. part, 81. A Copy-holder came not to the Lord's Court of the Manor to doe his Suit and Service by the ſpace of 3 years together. The Queſtion was, if it was a ſufficient cauſe of Forfeiture of his Copy-hold. It was ſaid by the Court, That it was no cauſe of Forfeiture, if a Warning be not given by the Lord of the time of his Court to be holden, and notice thereof given to the Copy-holder himſelf; and the withdrawing of his Suit by a Copy-holder is onely fineable: but if he doth deny to doe his Suit and Service, then it is a Forfeiture of his Copy-hold: and ſo was it adjudged *M.* 14 *Jac. in B. R.* in *Hammond* and *Winibank's* Caſe.

Sum-

Summons was given at the Church-door for a Copy-holder to appear at the Lord's Court, and doe his Suit and Service; upon which Summons he did not appear. The Doubt was, if it was a cause of Forfeiture of his Copy-hold. It was the opinion of the whole Court, That it was no cause of Forfeiture of his Copy-hold, because that it was not shewed that it was the Custome to make such Summons: and the Court said, That it were hard to make it a Forfeiture, because perhaps the Copy-holder had not Notice of it: and they held that in such case Notice must be given to the person, and his Refusall must be a wilfull Refusall.

H. 36 Eliz. in Co. B. Godb. 142.

Vid. M. 30 Eliz. C. B. Sir John Brunche's Case, Leon. 1 part, 104. Where general Warning of a Copy-holder to appear at the Lord's Court given within the Parish shall be sufficient, where not.

The Custome of a Manor was, That if a Copy-holder died seised, his Wife should hold his Lands as her Free-Bench, and be admitted Tenant, and that the Son should not be admitted Tenant during the life of his Mother; and farther the Custome was, That if any Copy-holder committed Felony, and it were presented by the Homage, that the Lord might seize the Copy-hold as forfeit: The Copy-holder died; his Wife was admitted to her Free-Bench: The Son committed Felony; the Wife died. The Question

H. 25 Eliz. in B. R. Borneford and Sir John Packington's Case, Leon. 1. part, 1.

was, if the Lord might ſeize the Copy-hold as forfeit. It was objected, He could not, for that the Son was not Tenant at the time of the Forfeiture committed, and ſo the Lord could not then ſeize, and the Cuſtome ſhould be taken ſtrictly. But notwithſtanding it was Reſolved, That the Lord ſhould have the Land as forfeit, and that the Son was a Copy-holder within the Intent of the Cuſtome.

If Husband and Wife be Joynt-Copy-holders of the purchace of the Husband; during the Coverture the Husband is attainted of Felony, and dieth: It is no Forfeiture of any part of the Copy-hold. But if the Purchace be made before the Coverture, then it is a Forfeiture of the moyety.

M. 5 Jac. in Scaccario, Godb. 269. The King being Lord of a Manor, a Copy-holder within the Manor made a Leaſe of his Copy-hold for 3 Lives; and the ſurviving Tenant for life continued the poſſeſſion of the Lands for 40 years. Though the making of ſuch a Leaſe for 3 Lives was in Law a Forfeiture of the Copy-hold; yet becauſe it did not appear upon the Endorſement of the Deed that Livery was made, it was holden, That

the King could not take advantage of the Forfeiture.

If a Copy-holder doth bargain and ſell his Copy-hold-lands by Deed indented and enrolled, it was Reſolved, The ſame was no cauſe of Forfeiture of the Copy-hold of which the Lord can take advantage, becauſe the Copy-hold did not paſs by the Deed: and ſo it was ſaid it was adjudged in *London*'s Caſe.

So, if a Copy-holder for life ſurrendreth to the Uſe of another in Fee, and beſides that makes Livery of the Land; this is no Forfeiture of his Copy-hold, becauſe the Eſtate paſſeth by the Surrender, and not by the Livery. 39 *Eliz. Bullock's Caſe.*

If a Copy-holder for life cuts down Timber-trees, it is a Forfeiture of his Copy-hold: and ſo it was adjudged in *Belfield* and *Adams* Caſe. But if a Copyholder makes a Leaſe for years, and the Leſſee cuts down Timber-trees, or commits other Waſte upon the Copy-hold-lands, the Lord cannot enter upon the Land for a Forfeiture; but in ſuch caſe the Lord is put to his Action upon the Caſe againſt the Wrong-doer.

SECT. XI.

Where the Act of the Lord, and what Act of his, ſhall diſpenſe with a Forfeiture made by his Copy-holder; where and what not.

Proofs.

Paſc. 5 Jac. Cro. 2. part, Mantlie and Willington's Caſe.

A Copy-holder commits Waſte, and after the Waſte done, the Lord accepts of the Rent from the hands of the Copy-holder. *Quere* if it ſhall bar him to enter for the Forfeiture. It is a *Quere* not Reſolved.

P. 5 Eliz. Moore 49.

If Lands be demiſable to two by Copy for life *ſucceſſivè*, and the Cuſtome of the Manor is, that they may not cut Trees: if the firſt of them cutteth down Trees, it is a Forfeiture both of the Eſtate of the preſent Tenant for life, and of the Eſtate of the other in Remainder over.

If a Copy-holder levies a Fine, makes a Feoffment, or ſuffers a common Recovery which deſtroys the Eſtate: in ſuch caſe no Acceptance of the Rent, or Act done by the Lord, ſhall be available to make the Eſtate again good. But where the Cuſtome of the Manor onely is broken;

ken; as if the Copy-holder makes a Lease of his Copy-hold-lands for more years then one year, or denies to pay his Rent, or denies to be sworn of the Homage, or commits Waste: there his Estate may be afterwards confirmed, and there and in such case the Acceptance of the Rent by the Lord will amount to a Confirmation of the first Estate.

In some cases, where an Estate of a Copy-holder is forfeited by Law, yet by Custome, and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land shall not be utterly forfeited or destroyed. As where the Custome is, That for Waste Copy-hold shall be forfeited, a Custome for to amerce the Tenant for the Waste done, and to distrain for the Amercement, will be a good Custome to mitigate the Forfeiture of the Copy-hold.

The Custome of the Manor where Copy-hold-tenements were demisable for lives was, That if any such Copy-holder suffered his Messuage to be ruined for want of Repairing, or by committing of Waste, if the same was presented by the Homage, the Lord used to distrain the Cattel as well of the Copy-

17 Car. in B. R. Thorne and Tyler's Case.

holder himself as of his Under-tenant levant and couchant upon the Lands for the said Amercement. It was objected, That the Custome was not good; for that it was an unreasonable Custome, that the Under-tenant should be punished for the offence of the Copy-holder, for the Under-tenant is a Stranger to the Custome, and Customes should be taken strictly. But it was Resolved that the Custome was good: For by the Law, the suffering of the Copy-hold Messuage to fall to ruine, or to be wasted, was a Forfeiture of the Copy-hold, and the Custome did abridge and mitigate the Forfeiture, and the Under-tenant for a year was a Tenant to the Lord, and distrainable for the Rents and Services, and the Charge lies upon the Land, and not upon the person; and therefore it was Adjudged, That the Custome was good, and the Amercement lawfull, and the Distress of the Cattel of the Under-tenant levant upon the Land was lawfull, all of them being by the Act of the Lord in his Court, and by the Custome of the Manor, in mitigation of the Forfeiture of the Land, and so for the good of the Copy-holder.

SECT. XII.

Whether Copy-hold-lands be within the Statute of Westm. 2. *and may be entailed, or not; and where and by what Acts the Issues in tail may be barred; and what shall be a Discontinuance of the Estate, what not.*

WHether Copy-hold-lands are within the Statute of *West.* 2. *cap.* 1. *de Donis, &c.* or may be entailed, hath been much controverted, and many Judgments and Resolutions have been on both sides; and it seemeth to be a Point not fully agreed upon at this day. I shall therefore make some little mention what hath been said on either side, and leave it to the judgement of others. And first for the Affirmative part, That Copy-holds are within the said Statute, and may be entailed, I shall begin with Mr. *Littleton* himself. Tenant by Copy of Court-Roll is, saith he, where there is a Custome in a Manor time out of mind used, that certain Tenants within the said Manor have used to have Lands and Tene-

ments to them and their Heirs in Fee-ſimple or in Fee-tail: and in that Chapter he particularly ſets forth the manner of Grants of ſuch Eſtates, *viz.* *Ad hanc Curiam venit* A *de* B, *& ſurſumreddidit in manus Domini, &c. unum Meſſuagium, &c. ad uſum* C *de* D, *& Hæredum ſuorum, vel Hæredum de corpore ſuo exeunt. Habendum ſibi & Hæredibus de corpore ſuo exeunt. &c.* By which it appeareth to be the opinion of Mr. *Littleton*, that an Eſtate may and might be of Copy-hold-lands. And herewith agreeth the opinion of Mr. *Plowden* in his Commentaries in *Morgan* and *Manxell*'s Caſe. But note, that the opinion of Mr. *Littleton* is, That there muſt be a Cuſtome of the Manor to enable ſuch Eſtates of Copy-hold-lands.

It is ſaid in *Coke* 3. part, in *Heydon*'s Caſe, That where an Act of Parliament doth alter the Service, Tenure or Intereſt of the Eſtate, either in prejudice of the Lord or of the Cuſtome of the Manor, or in prejudice of the Tenants, there ſuch an Act of Parliament doth not extend to Copy-holds. And therefore the Statute of *Weſtm.* 2. *de Donis*, becauſe it extendeth to the Alteration of the Ser-

vice

vice and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copy-holds. But in that Case it is agreed, That by a special Custome Lands might be entailed; for that it might be, that upon the creation of the Manors Lands were given by Lords of Manors to hold by their Tenants by particular Services and for particular Uses; *viz.* to some to them and their Heirs in Fee-simple, to some others to hold to them and the Heirs of their bodies begotten, and to some others for particular Estates, as for life, *&c.* and such Estates having continued in their Issues time out of mind, Custome hath now enabled such Estates to be of Copy-holds in tail; and although they have and enjoy such their Estates, be it either Fee-simple or Fee-tail, yet it is but *secundum Consuetudinem Manerii*: and therefore and for these Reasons and causes, although that Copy-hold be not or could not be entailed within the general words of the Statute *de Donis, &c.* yet by Custome time out of mind used, they say that Copy-holds may be entailed.

36 *Eliz.* in the *King's Bench*, it was Adjudged, That where the Custome of the

the Manor was, that Lands might be granted unto any in Fee-ſimple, in ſuch caſe a Grant of Lands unto a man and the Heirs of his bodie was within the Cuſtome: For a Cuſtome which extendeth to the greater will extend to the leſſer Eſtate.

M. 15 *Jac. Lee* and *Brown's* Caſe, *Poph.* 128.

Tenant in tail of a Copy-hold ſurrendred the ſame into the hands of the Lord, to the Uſe of *J S*, *&c.* In that Caſe 2 Queſtions did ariſe. 1. If Copy-holds were within the Statute *de Donis*, *&c.* 2. Whether the Tail might be cut off by a Surrender. The Court doubted of the firſt Point; but the better opinion ſeemed to be, That the Statute co-operating with the Cuſtome, they might be entailed.

H. 31 *Eliz. B.R. Bullein* and *Graunt's* Caſe, *Leon.* 1. part, 174.

A Copy-holder had Iſſue 3 Sons, *A*, *B*, and *C*, and ſurrendred his Copy-hold-lands to the Uſe of his laſt Will, and thereby declared the ſame to be to the Uſe of his Wife for life, the Remainder to *B* his ſecond Son in tail, and afterwards to *A* in Fee. It was a Queſtion in this Caſe, if *B* had a Fee-ſimple conditional in the Lands, or an Eſtate-tail. For if a conditional Fee, then a Remainder over of it could not be limited. It was the opinion of *Wray* Chief Juſtice, That it was an Eſtate-tail in *B*, and not a Fee con-

conditional, and that Cuſtomary Lands might be granted in tail.

A Surrender of Copy-hold-lands was made within the Manor of *Stevenſon*, to the Uſe of *J S* and the Heirs of his body; and after Iſſue, he ſurrendred the Lands unto another. It was agreed by all the Juſtices, That it was a Fee-ſimple conditional at the Common Law, and after Iſſue that he might alien the Lands. *H.* 34 *Eliz. B. R. rot.* 298. *Stanton* and *Barney's* Caſe.

A Copy-holder in Fee of the Manor of *Fairchilds* and *Preachers*, 3 *H.* 8. ſurrendred his Copy-hold-lands to the Uſe of his eldeſt Daughter for life, the Remainder to the eldeſt Son of the ſaid Daughter and the Heirs-males of his body, the Remainder to the right Heirs of *A* the Copy-holder in Fee. In this Caſe it was ſaid, That an Eſtate in Tail could not be of Copy-hold-lands. It was the opinion of *Fenner* and *Popham*, That by Equity of the Statute *de Donis* an Eſtate-tail might be of Copy-hold-lands, though not otherwiſe. *M.* 36 *Eliz. B. R. Gravener* and *Brook's* Caſe, *Popb.* 34.

Now on the other ſide, That Copy-hold-lands cannot be entailed, nor are within the Statute *de Donis*, *&c.* ſee theſe Caſes and Reſolutions following.

H. 35 *Eliz. in Co. B.* it was Reſolved by

H. 35 Eliz. in Co. B. Pitts and Huckley's Caſe.

by all the Juſtices, that Copy-holds were not within the Statute of *Weſtm. 2. de Donis*: For if they were within that Statute, then the Lord ſhould not enter nor take advantage of the Forfeiture of the Copy-hold for Felony, (the contrary of which was Reſolved in *Borneford* and Sir *John Packington*'s Caſe) but the Donor, and the Services ſhould be done to the Donor, and not to the Lord of the Manor; which is againſt the nature of a Copy-hold-Tenure.

Tr. 18 Jac. in Co. B. Royden and Monſter's Caſe, Cro. 3. part, 32, 33. Godb. 367. acc.

The Caſe was, That a Copy-holder ſurrendred to the Uſe of one in Tail, there being no Cuſtome to warrant ſuch Surrender. In this Caſe the Queſtion was, whether a Copy-hold might be entailed within the Statute *de Donis*. It was holden by all the Juſtices, That it could not be entailed within the Statute, and that for divers cauſes. 1. Becauſe it is not within the Letter of the Statute, which ſpeaks onely *de Tenementis per Chartam datis*: and Copy-holds cannot paſs by Deed, but by Surrender onely, as is agreed on all ſides. 2. Becauſe they are not within the meaning of the Statute, becauſe that before 7 *E.* 4. 19. they were not of any account in Law, being onely Eſtates at will of the Lord

Lord *secundùm Consuetudinem Manerii.* 3. Because the said Statute *de Donis* provides onely against those who might make Disinherison by Fine or Recovery, which a Copy-holder there could not doe or make, because that then upon such Grants in Tail the Reversion should be left in themselves, which could not be, being to the prejudice of the Lord of the Manor. And also 4. because it would be very mischievous, because then there should be no means to dock or cut off such Entails, (common Recoveries and Fines not being then in use) unless there were a special Custome to that purpose.

Having thus declared and made mention of the several Cases and Resolutions in this much-controverted Point, Whether Copy-hold may be entailed within the said Statute *de Donis*, *&c.* I shall not deliver any absolute opinion upon the same, although I do much incline to the Affirmative part, being chiefly led thereunto by the opinion of Mr. *Littleton*, and by the Resolution in *Manxell*'s Case, and of my Lord *Coke* in *Heydon*'s Case, and a late Resolution in the said Point, 42 *Eliz.* in *Erish* and *Rives* Case, where it was adjudged in the Court of *Common Pleas*, upon

upon an Evidence given in a Case of Copy-hold-lands within the Manor of *Isleworth-Sion* in the County of *Middlesex*; where it was Resolved, That no Estate-tail could be of a Copy-hold without a particular Custome to warrant the same: but if there was such a particular Custome within the Manor to warrant such Estates, then by the Custome co-operating with the Statute (as before is expressed) Copy-hold-lands might be well entailed within the said Statute.

Admitting then that by an especial Custome of the Manor Lands may be entailed; the next matter to be considered of is, By what and whose Acts the said Estate shall be either discontinued or barred, and what shall amount to a Discontinuance or a Bar to the Issue in Tail of such Estate.

13 R. 2. fits. Judgment 7. In 13 *R.* 2. fits. Judgment 7. it is said, That the Heir who is inheritable to the Copy-lands by Custome may recover the same by Plaint in the Court of the Lord in the nature of an Assise of *Mort-dancestor*, but he shall not have an Assise of *Novel Disseisin*: And 15 *H.* 8. Tenant by Copy 24. The Heir of a Copy-holder Tenant in Tail shall recover

15 H. 8. Tenant by Copy 24.

cover the Lands in a Formedon in the Diſcender.

The Cuſtome of a Manor was, That Plaints in the Court of the Lord of the Manor have uſed to be in real Actions. A Recovery was by Plaint in the nature of a real Action againſt a Copy-holder being Tenant in Tail, and a Recovery thereupon had. It was holden in that Caſe, That the ſaid Recovery ſhall be a Diſcontinuance to take away the Entry of the Heir in Tail, becauſe ſuch Plaints are warranted by the Cuſtome, and it is an Incident which the Law annexeth to the Cuſtome, That a Recovery ſhall be a Diſcontinuance. But *vide Tr.* 36 *Eliz. in B. R.* in *Deal* and *Rigden's* Caſe. If it had been a Surrender in Court, it had been no Diſcontinuance.

36 *Eliz. B. R. Deal* and *Rigden's* Caſe, *Moore* 358.

In 27 *Eliz.* in a Caſe concerning the Manor of *Northhall* in the County of *Eſſex*, That if Copy-hold-lands might be entailed within the Statute of *Weſtm.* 2. then a Cuſtome of a Surrender of it ſhould be a Bar or a Diſcontinuance of ſuch Eſtate; for as the Eſtate might be created by Cuſtome, ſo it might be diſcontinued by a Surrender by Cuſtome. And *Tr.*

Mo. 9 *Car. in Co. B. Hill* and *Upchurche's* Caſe, *Brownl.* 121.

38 *E-*

38 *Eliz. Field* and *Eliot*'s Case, A Surrender by Tenant in Tail of a Copy-holder in Fee makes a Discontinuance of it. But yet notwithstanding those Authorities and Cases, I do conceive that a Surrender is no Discontinuance of a Copy-hold-estate in Tail.

H. 30 Eliz. B. R. Right and Footeman's Case, Leon. 1. part, 95.

If a man be seised of a Copy-hold in the right of his Wife, or be Tenant in Tail of a Copy-hold, and he doth surrender to the Use of another in Fee: It was holden in that Case, That the same doth not make any Discontinuance of the Estate of the Wife or of the Estate-tail, but that the Wife or the Issue in Tail may respectively enter into and upon the Land. And according to this it was adjudged in *Gravenor* and *Brook*'s Case before mentioned in 36 *Eliz.*

37 Eliz. in C. B. Lane and Hil.'s Case.

Copy-hold-lands were entailed, and the Copy-holder surrendred the said Lands to the Use of another man in Tail with divers Remainders over, and then he died. It was said in this Case, That it was no Discontinuance of the Tail, but the Issue in Tail, notwithstanding the Surrender, might enter. But it was said in that Case, That if it were a Discontinuance, that in such case a *Formedon* in the

the *Reverter* did not lie by the Tenant in Tail, because when a Copy-holder makes a Gift in Tail, he hath no Reversion, but a Possibility; and the Lord shall avow upon the Donee for the Rents and Services, and not upon the Donor.

In Trespass it was adjudged, That a Surrender by Tenant in Tail of a Copy-hold was not any Discontinuance of it, no more then a Surrender by Tenant for life to another in Fee was a Forfeiture. *H. 1 Jac. Oldcastle's Case, Moore 753.*

If an Infant Tenant in Tail surrendreth his Copy-hold-lands to the Use of a Stranger, who is admitted, the Infant may enter at his full age, because it was not a Bar nor a Discontinuance. *H. 35 Eliz. Goales and Gran's Case adjudged accordingly.*

It is not to be disputed or questioned whether a Common Recovery of Lands at the Common Law with Voucher over and Warranty be a Bar of Lands entailed: It is universally received by all Learned in the Laws of the Realm to be a Bar of such an Estate, and the Inheritances of a great many persons of Quality and others do depend upon such Common Recoveries had and suffered. But then the Question hath been, whether a Common Recovery had and suffered in the Court

of the Lord of the Manor shall be a Bar of an Estate of Copy-hold-lands entailed: and for that, it will stand upon this difference, Where the Custome of the Manor hath always been, that such a Recovery there had shall be a Bar, where not. For without a special Custome, I do conceive that by a Recovery had and suffered in the Court of the Lord of the Manor an Estate-tail of Copy-hold-lands cannot be barred: But where such a Custome is or hath been out of mind used, there I conceive that a common Recovery had and suffered in the Court of the Manor will bar an Estate in Tail of Copy-hold-lands. I shall onely put you two Judgments and Resolutions to make good this difference, although many others may be alledged.

P. 37 Eliz. in B. R. Clun and Pease's Case, Cro. I. part.

Upon a special Verdict in an Action of Trespass it was found, That the Lands where Copy-hold demisable in Tail, with the Remainder over in Tail: That Tenant in Tail in possession suffered a Common Recovery with Voucher in the Court of the Manor of these Lands, and afterwards died: But there was not any Custome found for suffering Recovery of such Lands in the Court of the said Manor.

nor. So it was holden by the whole Court in that Case, That the Recovery should not bind the Tail but upon a Recompence in value, and in that case the issue could not have Land in value; Also the Lord should lose his Fine, and the party to whose Use the Recovery was had should hold the Lands without Admittance or Grant from the Lord, which is contrary to the nature of a Copy-hold.

The other Case was this. Land was demisable in Tail by Custome: A Copy-holder demised the Land in Tail by Copy: The Copy-holder suffered a Common Recovery in the Court of the Manor with Voucher and Warranty. The Court at the first doubted of it, because a Warranty could not be annexed to such an Estate in Tail. But yet afterwards it was Resolved, That the Recovery there was a Bar of the Tail. And Note, for a Conclusion of this Point, That at this day, by the Customes of several Manors, Common Recoveries are had and suffered in the Courts of Lords of Manors for the docking and barring of Estate-tails of Copy-holds. And much inconvenience would ensue, both if Copy-holds at this day might not by Cu-

M. 37 Eliz. in B. R. Eylett and Lanes Case; Cro. 1. part.

ſtome be entailed, and likewiſe if by Cuſtome Common Recoveries had of Eſtate-tails with Voucher over in the Courts of Lords of Manors ſhould not thereby be docked and barred.

SECT. XIII.

What things are incident to a Copy-holder, and what he may take of common right without the Grant or Licence of the Lord; And what Acts upon the Land ſhall bind the Copy-holder, what not.

IF a Copy-holder according to the Cuſtome doth ſurrender into the hands of 2 Tenants to the Uſe of *J S* and his Heirs, and afterwards the Copy-holder dieth before the Preſentment be made of the Surrender by the Tenants, and the Lord before the Preſentment accepts of the Rent of *J S* generally, but not as a Copy-holder; the Heir of the Surrenderor may enter into and upon the Lands, and receive the Profits thereof to his own uſe, for that nothing reſteth in the Surrenderee before Admittance, and the Inheritance of the Copy-hold is in the Heir *quaſi* by Diſcent.

To

To have Common in the Wastes of the Lord is not a thing incident to his Copy-hold, but is by Prescription or Custome of the Manor. If therefore a Copy-holder purchaseth the Inheritance of the Land, the Interest of the Common being a thing intire is gone and determined. But if the Copy-holder doth surrender part of his Copy-hold-lands to the Use of another, who is admitted, yet his whole Common is not thereby determined, but he shall have Common still for the Lands not surrendred. *Pasch. 43 Eliz. adjudged.*

A Copy-holder may take House-bote, Hedg-bote and Plough-bote upon his Copy-hold-lands of common right, as a thing incident to the Grant, if it be not restrained by a Custome, that the Copy-holder shall not take it but by Assignment of the Lord or his Bailiff. And if the Lord, where the Tenant hath such Botes, cuts down all the Woods and Under-woods which are standing and growing upon the Lands, to prevent the Copy-holder of his Botes, he may have an Action of Trespass against the Lord, as it was Resolved in *Heydon* and *Smith*'s Case, *Pasch.* & *Fac. in Co. B.* 9 H. 4. 2. Waste 59. *Coke* Select Cases 68.

A Mannor may be Copy-hold, and holden of another Mannor by Copy of Court-Roll: If such a Copy-hold-Mannor be granted unto *J. S.* and his Heirs, he may hold a Copy-Court within his said Mannor without a special Grant of it; for that of common right a Court-Baron or a Copy-hold-Court is incident to every Mannor.

M. 3 Jac. B. R. The King and *Stafferton's* Case, *Telv.* 190, 191.

A Lord of a Mannor grants a Copy-hold for 3 Lives, and afterwards takes a Wife: The 3 Lives and determine: The Lord enters into the Mannor, and keeps the Copy-hold-lands in his hands for a time, and then grants the Lands over again by Copy, and dieth: The Wife of the Lord enters, and claims Dower in it. In this Case it was Resolved, That the Copy-holder should hold the Lands discharged of the Dower, because the Copy-holder comes and is in the Lands by the Custome, which is paramount to the title of Dower.

P. 26 *Eliz. C. B. Chaw* and *Dover's* Case, *Leon.* 1. part, 16.

A Copy-holder is seised of Lands at Common Law, and also of Lands holden by Copy of Court-Roll, and he by Indenture, without Licence of the Lord, makes one Lease of both Lands, reserving Rent: It was said by *Dyer*, That in such case the whole Rent

P. 5 *Eliz.* by *Dyer. Vide* Moore 50.

Rent is issuing out of the Lands at Common Law, because the Lease as to the Copy-hold-lands was utterly void.

If the Lord grants to his Copy-holder the Trees growing upon the Lands, and which shall after grow, with liberty to cut them down and carry them away; he may justifie the cutting of the Trees which are growing, and it shall not be a Forfeiture of his Copy-hold, because the Lord hath by his Grant dispensed with it: But he cannot cut down the Trees which shall there after grow, as it was said by *Plowden* and *Popham*. *P. 20 Eliz. in B. R. Moore 91.*

If a Copy-holder binds himself in a Statute, his Copy-hold-lands shall not be extended upon the said Statute, because the Copy-holder in the eye of the Law hath an Estate but *ad voluntatem Domini secundum Consuetudinem Manerii*: But if a man be Tenant for life or years of a Manor, and a Copy-hold comes to his hands by Forfeiture or other determination, and he binds himself in a Statute; although the Copy-hold be after granted, yet it may be extended upon the Statute, because the Copy-hold was annexed to the Free-hold, and joyned with it in the hands of the Lord, when *Pasc. 12 Eliz. in B. R. adjudge. acc.*

the Statute was acknowledged and entred into.

M. 3 *Jac.* *Swayn* and *Beckett's* Case, *Moore* 812.

The Customs of a Manor was, That a Copy-holder might cut and lop Trees for Hedg-bote and other necessaries: The Queen made a Lease of the Manor to *J. S.* with Exception of Trees: King *James* granted the Reversion to *J. D.* in Fee: The Assignees of the Term granted a Copy-hold to other for 3 Lives, *Habendum* to them *successivé*: The Copy-holder cut Trees. It was Resolved, That the Copy-holder was in by the Custome paramount the Exception, although he took his Estate after the Exception, and therefore might justifie the cutting of the Trees for the Hedg-bote and other necessaries.

35 *Eliz.* *Co.* 4. part, *Bullock* and *Dibley's* Case.

The Husband seised in Fee of Copy-hold-lands in the right of his Wife surrendred the same to another, who was admitted, and afterwards the Husband died. It was Adjudged that in this case the Wife might enter, and she should not be put to her *Cui in vita*.

M. 9 *Jac.* in *Co. B.* adjudge, acc.

If there be Lessee for life, the Remainder for life, of a Copy-hold, and the first Tenant for life doth purchase the Freehold of the Copy-hold, and levies a Fine thereof,

thereof, and 5 years paſs: it was Adjudged, That this Fine ſhould bar him in the Remainder of his Copy-hold.

SECT. XIV.

Where the Lord of the Manor ſhall be Chancellour in his own Court, to determine the Differences which ariſe betwixt Copy-holders.

A Copy-holder doth ſurrender his Copy-hold-lands to *A*, to hold the Lands till he hath levied the ſumme of 100*l.* upon truſt that afterwards he ſhall ſurrender to the Uſe of *B*: *A* levies the money, and being required to make the ſurrender to *B*, he refuſeth to doe it; whereupon *B* exhibits his Bill to the Lord in the Court of the Manor: The Lord there makes a Decree, that *A* make the Surrender to *B*, which he again refuſeth to doe; and thereupon the Lord ſeizeth the Lands, and afterwards admits *B* to the ſame. It was the opinion of the whole Court in this Caſe, That both the Seizure of the Lord and his Admittance of *B* were lawfull, becauſe the Lord in ſuch Caſes of Equity to execute Truſts

H. 25 Eliz. in B. R. Leon. 1. part, 2.

is

is Chancellour in his own Court.

Vid. 14 H. 4. 34. If a falſe Judgment be given in a Court-Baron by the Steward againſt a Copy-holder, the Copy-holder in ſuch caſe ſhall not have either a Writ of Errour or a Writ of Falſe Judgment; but he may ſue in the Court of the Lord by Bill, to be relieved againſt ſuch Judgment; and the Lord, as Chancellour, may give him Relief therein, and ſhall reſtore the Land to the party upon the falſe Judgment given by the Steward, and Reſtitution made to the Copy-holder.

SECT. XV.

Of Surrenders upon Conditions; and where ſuch Surrenders ſhall be good, where not.

Proofs.

P. 31 *Eliz. Co.* 4. part, *Kite* and *Queinton's Caſe.* A Copy-holder in Fee ſurrendred out of Court his Copy-hold-lands to the Uſe of another and his Heirs upon Condition: At the next Court the Surrender was preſented, but in the Preſentment the Condition was omitted: He to whoſe Uſe the Surrender was made being dead, the Lord admitted his Heir. It

was

was Reſolved in this Caſe, That the Preſentment of the Surrender was void, becauſe it was not made in ſuch manner as the Surrender was made. But if the Conditional Surrender had been preſented, it had beed good, although it was not entred into the Court-Roll.

A Copy-holder ſurrendred his Copy-hold upon Condition, and afterwards by Deed he releaſed the Condition. Reſolved it was good without a Surrender, for that a Condition or a Right cannot properly be ſaid to be determined by a Surrender, but it may be by a Releaſe. *Tr. 2 Jac. B. R. Cro. 2. part, Hall & Shardbrook's Caſe.*

The Caſe was; Grandfather, Father, and Son: The Grandfather died: The Father aſſigned Dower to the Grandmother, being his Mother, who ſurrendred it back to the Father paying 10 *l. per annum*: The Father died; his Wife brought Dower againſt the Son and recovered, becauſe the Father had the Fee and Freehold conjoyned in the life of the Grandmother by the Surrender. It was Reſolved in this Caſe, That when the Wife of the Father doth recover Dower, ſhe ſhall pay to the Grandmother ſo much Rent as doth belong to her proportion in Dower. And in this Caſe it was holden, *M. 15 E. 3. 13.*

den, That although the Eſtate of a man be Conditional and defeaſible upon a bad Title; yet the Wife ſhall not be ouſted of her Dower untill the Conditional or defeaſible Title be defeated. And where Husband and Wife are Tenants for life, and ſurrender to him in the Reverſion, the Wife of him in the Reverſion ſhall be endowed, and yet the Surrender is but Conditional; for if the Wife of the Tenant for life overliveth her Husband, the Surrender is defeaſible: *à fortiori* in caſe where it is not defeaſible, as in this Caſe. And it was ſaid in caſe of a Surrender of Copy-hold-land, where it was Conditional, the Wife is dowable of it, if the Condition do not determine the Eſtate in the life-time of the Husband: But a Feme is not dowable of Copy-hold but by Cuſtome of the Manor.

H. 27 Eliz. Cro. 3. part, 68. Bright and Husband's Caſe.

A Copy-holder deviſed his Lands to his Wife for life, and that ſhe ſhould ſell the Lands for the payment of his Debts; and ſurrendred to the Uſe of his Will: The Copy-holder died: His Wife ſurrendred the Land upon Condition to pay 12 *l.* It was Adjudged, It was a good Surrender upon the Condition, and that it was a good Sale made by her.

The

The Father, Copy-holder in Fee, surrendred his Copy-hold-lands to the Use of his Son in Fee, upon Condition to perform Covenants in an Indenture: The Son after Admittance surrendred to *J S* upon Condition that if the Son pay 10 *l.* the Surrender to be void: The Son neither pays the 10 *l.* nor performs the Covenants in the Indenture: The Father enters. Resolved, That by the Entry of the Father both the Surrenders were avoided, and there the Son might well enter after the death of his Father, and the Surrender made by him to *J S*. *Tr. 33 Eliz. Cro. 1. part, Symonds and Lawn.'s Case.*

If a Copy-holder doth surrender his Lands to the Use of *J S* and his Heirs absolutely, and the Lord admits the Tenant upon Condition, it is void; for that after Admittance the Tenant is in by him who made the Surrender, & not by the Lord. *33 Eliz. Co. 4. part, Westwick's Case.*

The Custome was, That a Copy-holder might out of Court surrender to the Use of a Stranger in Fee: The Lord of the Manor made *J* his Steward *ad exequendum per se*, or his sufficient Deputy, who made *A* his Deputy *pro hac vice* to take a Surrender of Husband and Wife, the Remainder in Fee: The Deputation was farther, *viz.* *Et ulterius faciendum* *Tr. 28 Eliz. in B. R. Cro. 1. part, Burdett's Case.*

quan-

quantum in me est: *A* took a Surrender of the Husband and Wife upon Condition, which Condition was afterwards peformed and executed. Resolved in this Case, That although the authority to take the Surrender was absolute, and to be without a Condition; yet when *A* took it upon a Condition to be performed, it was a good Surrender made to him, by reason of the words in the Deputation, *Et ulteriùs faciendum, &c.*

P. 39 Eliz. B.R. *Oland* and *Barwick's* Case, *Cro.* 1. part, *&c.*

A Woman Copy-holder *durante Viduitate* sowed the Land, and before Severance of the Corn she took Husband. Resolved, That although the Estate of the Wife was incertain, and determined by the Limitation, and not by any Condition either in Fact or in Law, that the Lord should have the Corn sowed upon the Lands.

H. 2 Jac. B.R. *Cro.* 2. part, *Curties* and *Wolverston's* Case.

A Copy-holder in Fee of Lands discendable in *Borough-English* had 3 Sons, and surrendred to the Use of his Will, and thereby devised his Lands to his middle Son in Fee, upon Condition to pay to his 4 Daughters, to every of them 20*l.* at their full age: The eldest Son had Issue 2 Daughters, and died: The middle Son is admitted, and doth not

pay

pay the Daughters their Summs at their full ages: The youngest Son entred in the name of the Daughters, who disagreed to it. It was Resolved, That it was a Condition, but not broken without demand of their Summs at their full ages; and when they disagreed to the Entry, the Entry of the youngest Brother was not lawfull.

A Copy-holder surrendred his Lands into the hands of the Lord, *Habendum* after his death to the Use of an Enfant *en ventre sa Mier*. Resolved that a Surrender to an Enfant *en ventre sa Mier* was not good as an immediate Surrender, for that it cannot begin at a day to come. And whereas a Remainder was thereupon limited over, it was holden to be void, because it was to begin upon a Condition precedent, (*Vid.* the Condition) which was never performed; and therefore the Surrender into the hands of the Lord was void, because he takes it but as an Instrument to convey it over.

M. 13 *Jac.* B. R. *Simpson* and *Sothern's* Case, *Cro.* 2. part.

SECT.

SECT. XVI.

Where Custome which warrants the Lord or his Copy-holder to grant greater Estates, warrants the Grants of lesser Estates.

Proofs.

36 Eliz. Co. 3. part, Greenor and Todd's Case.

THE Custome of a Manor is, That a Copy-hold-estate may be granted in Fee-simple. In that Case it was adjudged, That an Estate thereof granted to one and the Heirs of his body is good, and within the Custome; for *Ubi licet quod est majus, non debet quod est minus non licere.*

39 Eliz. in B.R. Downs and Hopkins Case.

The Custome of a Manor is, That Copy-hold-estates may be granted for life or lives: In such case a Grant is made to a Woman *durante viduitate sua:* And it was adjudged good, and within the Custome, for that every Grant for life is *durante viduitate*; but every Grant *durante viduitate* is not for life.

H. 34 Eliz. B.R. Stanton and Barney's Case.

The Custome of a Manor out of mind used was, To grant certain Lands, parcell of the said Manor, in Fee-simple, and never any Grant was made to any and the Heirs

Heirs of his body for life or for years: The Lord of the Manor did make a Grant by Copy to one for life, the Remainder over to another and the Heirs of his body. It was adjudged, That the Grant and the Remainder over was good; for the Lord having an Authority by Cuſtome, and an Intereſt withall, might grant any leſſer Eſtate: but otherwiſe it is where one hath but a bare Authority.

In Treſpaſs the Iſſue was, if the Lord of the Manor granted the Lands *per Copiam Rotulorum Curiæ Manerii ſecundùm Conſuetudinem Manerii prædict.* It was given in Evidence, that the Lord of late at his Court granted the Lands *per Copiam Curiæ*, where it was never granted by Copy before. In that caſe the Jury are bound to find *quòd Dominus non conceſſit*, as it was holden by the Court. For although *de facto Dominus conceſſit per Copiam Rotulorum Curiæ*, yet *non conceſſit ſecundùm Conſuetudinem Manerii prædict.* But in that Caſe it was holden, If Cuſtomary Lands had been grantable in Fee, if the ſame Land eſcheat to the Lord, and he grant the ſame to another for life, it is a good Grant, and warranted by the Cuſtome; for the Cuſtome which enables

P. 29 *Eliz. C. B. Kempe* and *Carter's* Caſe, *Leon.* 1. part, 56.

him to grant in Fee ſhall enable him to grant for life.

M. 15 & 16 Eliz. in Co. B. adjudge. acc.

If a Copy-hold-eſtate fall into the hands of the Lord by Eſcheat, Forfeiture, or the like, and the Lord make a Leaſe thereof for years or life by Deed or without Deed, or if he make a Feoffment of it upon Condition, or if the Copy-hold ſo eſcheated, *&c.* be extended upon a Statute or a Recognizance, or the ſame Land be aſſigned to the Wife of the Lord in Dower; In all theſe caſes the Land can never be granted again by Copy, becauſe after ſuch Diſpoſition thereof it was not demiſeable. But if the Interruptions were not lawfull, but tortious, as if the Lord be diſſeiſed, or if the Land be recovered againſt the Lord by a falſe Verdict, or by an erroneous Judgment; yet after the Land is re-continued, and the Interruption which was wrongfull removed, the Land is grantable again by the Lord by Copy.

SECT.

SECT. XVII.

Who shall be said such a Lord of a Manor as may grant Copy-hold-estates; and how long such Estates shall continue; and what persons shall be capable of Copy-hold-estates, what not; and what may be granted by Copy.

EVery one who hath a lawfull Estate or Interest in the Manor, be it Fee, Fee-tail, Dower, Tenantry by the curtesie of *England*, Tenantry for life or years, Guardian, Tenant by Statute-Merchant or *Elegit*, are sufficient Lords and persons to grant Copy-hold-estates to others. And in some special case Estates in Copy-hold-lands may be granted by such a one who hath no Estate or Interest in the Manor. *Coke* 1. part; Instit. 58.

Proofs.

A Guardian in Socage held a Copy-Court in his own name, and granted Copies in Reversion. Adjudged he was *Dominus pro tempore*, and had an Interest in the Lands; for he might make a Lease thereof *Tr.* 1 *Jac. B. R. Soapland* and *Ridler's* Case, *Owen* 115.

thereof in his own name, and therefore he might both grant Copies, and also admit Copy-holders to Estates before granted. But the Bailiff of a Manor hath no Interest in the Manor, and therefore he cannot grant Copies of the Land holden of the Manor.

F. 41 *Eliz. B. R. Gay* and *Kay's* Case, *Cro.* 1. part.

The Custome of a Manor was, That *Dominus pro tempore* might make a Demise for 2 or 3 Lives in Possession or Reversion: A Woman Tenant in Dower for life of the Manor granted a Copy-hold to *J S* and 2 others for their Lives, *Habendum post mortem* of *A B*, and died: *A B* died. It was holden by the Court in this Case, That the Grant was good in Reversion, although it was not executed in the life of the Tenant in Dower: And *Vide*, That the Lord of a Manor for life, or any other particular Estate, having Interest in the Manor, might grant Copies in Reversion of Lands which are holden by Copy of Court-Roll, although the Grants were not executed in the life of the Grantors; as it was adjudged in Sir *Peter Carew's* Case. *Quere*: for *Hil.* 14 *Eliz.* in the Earl of *Oxford's* Case in *Moore* 95. it is not good, unless it come in Possession during the life of the Grantor.

H. 14 *Eliz.* the Earl of *Oxford's* Case, *Moore* 95.

Note,

Note, It was holden by the Justices *P.* 15 *Jac. in Co. B.* That there ought to be a Custome to enable the Lord of the Manor to make a Grant of a Copy-hold in Reversion. *P.* 15 *Car. C. B.* Godb. 6. acc.

Generally, Things which lie not in Tenure, as Advowsons in grosse, Commons in grosse, or the like incorporate Inheritances, out of which a Rent cannot be reserved, cannot be granted by Copy of Court-Roll by the Lord of the Manor; nor can they be holden by any Service to be done for them. But Advowsons appendants, Commons appendants, and such things as are parcell of a Manor, and which have Continuance, may be granted by the Lord of the Manor, to be holden by Copies of Court-Roll, according to the Custome of the Manor.

In Trespas for cutting down of Under-woods, the Question was, Whether Under-woods might be granted by Copy of Court-Roll, for that by such Grant or Lease the Soil passeth not. But it was Resolved, That Under-woods are a thing of Inheritance and perpetuity, which may have Continuance for ever; for after they are once cut, they will grow a- *M.* 38 *Eliz.* B. R. *Cro.* 1. part, *Hoe* and *Taylor's* Case.

gain *ex ſtipitibus*, and ſo they may be well granted by Copy.

P. 43 Eliz. B. R. Sands and Darcie's Caſe, Cro. 1. part, acc.

In Trover and Converſion of 20 Loads of Tith-Hay, the onely Queſtion was, Whether Tithes were grantable by Copy, It was objected they were not, becauſe it is againſt the nature of Tithes, and none could have a property in them before the Council of *Lateran*, and therefore it was impoſſible to have any Cuſtome ſo to grant them. But it was Reſolved, That they might be granted by Copy, if there had been a Cuſtome time out of mind ſo to grant them.

39 H. 6. 9. b. Vid. M. 11 Jac. Moore and Goodgreave's Caſe, Cro. 2. part. Coke 11. part, Sir Henry Nevil's Caſe. M. 37 Eliz. B. R. Sir John Bourn's Caſe, acc.

One Manor may be holden of another Manor, and may be demiſeable by Copy of Court-Roll, and there may be Cuſtomary Tenants, according to the Cuſtome of the Manor; and ſo it was ſaid, That a Market or a Fair, although they are things of Priviledge and Liberty onely, yet becauſe they might be appendant unto or parcel of a Manor, or uſed with a Manor and Lands, that an Eſtate might be granted of them by Copy of Court-Roll.

SECT.

SECT. XVIII.

What Acts or things are inseparable, and must be done by the Copy-holder himself; and what acts and where may be done by his Attorney.

A Copy-holder, notwithstanding that generally and according to the Custome of the Manor he hath an Estate of Inheritance in his Copy-hold-lands, *viz. secundum Consuetudinem Manerii*; yet it hath this Qualification, that it is *ad voluntatem Domini*: and in that respect, upon the Original Grants of such Estates, the Lords of Manors did reserve unto themselves certain Duties and Services and Suits to be done by their Copy-holders; some of which were so inseparable to the person of the Copy-holder, that they could not be done by any other person; others were such as concerned and had respect both to the Lord for his good, and the good of the Manor, as those which concerned the particular good of the Copy-holders themselves, or the Lands which they held of the Lord.

The principal Dutie inseparably to

Co. 9. part, in *Comb's* Case.

be done to the person of the Lord, and by his Copy-holder, is his doing of Fealty, which upon every Admittance he is to doe to the Lord, for that is especially mentioned in the Copy granted by the Lord in these words, *viz. Dat. Domino pro Fine, & fecit Domino fidelitatem:* and Fealty cannot be done but in person, and not by an Attorney. And although (as Mr. *Littleton* saith) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himself, and it must be done by the Copy-holder himself in person.

A Copy-holder may take an Estate in the Copy-hold by the Surrender of another Copy-holder into the hands of two Tenants of the Manor by Custome, (as before is declared.) But then this Surrender must be presented in Court, and he to whose Use the Surrender was made must personally appear in Court, and be there admitted to the Land; and he cannot be admitted by Attorney.

The Suit and Service which is to be done in the Court of the Lord by his Copy-holder must be done in person, and not by another for him; and it is to be done upon his Oath, and a man cannot swear

ſwear by Attorney; and therefore he cannot make an Attorney to doe his Suit and Service, but the ſame muſt be done by him in perſon.

Again, If a Copy-holder, upon Notice given him of the ſpecial day of holding the Lord's Court, and being ſummoned to appear and to doe his Suit and Service, ſhall wilfully neglect, or refuſe to appear and doe his Suit, it is a Forfeiture of his Copy-hold: and therefore ſuch Suits and Services cannot be done by Attorney, but in proper perſon.

A Copy-holder of a Manor of the Earl of *Arundel* did ſurrender his Lands to the Uſe of his Will, and thereby deviſed them to his youngeſt Son and his Heirs, who being in Priſon made a Letter of Attorney to *J D*, to pray to be admitted to the Land for his Uſe, and after ſuch Admittance to ſurrender the ſame Lands to the Uſe of *J S* and his Heirs, to whom he had ſold it for the payment of his Debts, who came into Court accordingly, and prayed to be admitted, and make a Surrender of the Land to *J S*; all which was done. In this Caſe it was Reſolved by the Juſtices, That it was no good Admittance, nor no

Tr. 28 *Eliz. in B. R.* the Earl of *Arundel's* Caſe, *Leon.* 1. part, 26.

no good Surrender; for that the Heir ought to have come himſelf in perſon in Court to take up his Land, and afterwards to ſurrender it, or otherwiſe have procured the Lord to appoint his Steward to have gone to the Priſon unto him to have been admitted, and afterwards to have ſurrendred the Lands.

Some particular things a Copy-holder may doe by his Attorney; as he may pay his Rent by his Servant or Attorney, or tender it by them; and ſuch Payment and Tender ſhall be good. So if the Cuſtome of the Manor be, That upon the death of every Copy-holder the Tenant ſhall pay and render his beſt Beaſt unto the Lord for a Heriot, there the Heriot may be paid by the Heir before his Admittance, or by the Executor of the Copy-holder; and ſuch Payment or Tender of it ſhall be good.

So by an eſpecial Cuſtome within the Manor a Copy-holder may appoint or nominate, in the preſence of two Tenants of the Manor or other two ſufficient Witneſſes, who ſhall have his Copy-hold-lands after his deceaſe, and alſo that they may appoint what Fine the Lord ſhall have for the Admittance of the Tenant,

M. 5 Jac. in B. R. Balt's Caſe.

ſo

ſo it be a reaſonable Fine; and ſuch Diſpoſition of his Lands and appointment of Fine ſhall be good by the Cuſtome: But yet after ſuch Diſpoſition made, the party who is to have the Land muſt in perſon come into the Lord's Court, and pray to be admitted unto the ſame. And ſo was it very lately adjudged in the Court of *Common Pleas*, both for the Point of the Cuſtome, that it was a good Cuſtome, and Admittance.

A Copy-holder dwelling in a Town long diſtant from the Manor, having Notice of the Court-day when it was to be holden, upon Summons appeared not himſelf, but appointed his Son his Attorney to appear and doe the Services for him for his Copy-hold-lands. In this Caſe it was holden by the Court, That ſuch a perſon ſo appointed might eſſoign the Copy-holder, but not doe the Services for him, for that none could doe the ſame but the Tenant himſelf. *M. 3 Eliz. B. R. Sir John Brauncb.'s Caſe, Leon. 1. part, 104.*

SECT.

SECT. XIX.

What Cuſtomes within Copy-hold-Manors ſhall be ſaid to be good and reaſonable Cuſtomes, and what not.

Coke 4. part, 21. Cuſtome is the very Soul and life of Copy-hold-eſtates; for without Cuſtome, or if they break their Cuſtomes, they are at the Lord's will, for they hold their Lands *ad voluntatem Domini*, although (as before is ſaid) it be *ſecundùm Conſuetudinem Manerii, &c.* But then the Cuſtomes muſt be reaſonable, and not unreaſonable Cuſtomes.

Coke 1. part Inſtitut. 59. If the Lord doth challenge a Cuſtome within his Manor, to have a Fine of every of his Copy-holders of the ſaid Manor at the Alteration or Change of the Lord of the Manor, be it by Alienation, Demiſe, Death, or otherwiſe; this is an unreaſonable Cuſtome, for by this means his Copy-holders may be oppreſſed by the Lords by the payment of a multitude of Fines.

Coke 5. part, Penniman's Caſe. A Cuſtome within a Manor, That every Alienation of Lands within the Manor ſhall be preſented at the next Court hol-

holden for the ſaid Manor, upon pain that ſuch Alienation ſhall be void, is a good and reaſonable Cuſtome; for it is but reaſonable that the Lord ſhould know who is his Tenant.

A Copy-holder alledged a Cuſtome within a Manor in *Eſſex* to be, That all the Tenants within the ſaid Manor had uſed to cut down Trees, to repair their Copy-hold and Free-hold Tenements within the ſaid Manor, and alſo to ſell their Trees at their pleaſures. It was doubted if it was a good Cuſtome: but the better opinion of the Court ſeemed to be that the Cuſtome was good. *Paſch. 6 Jac. in Co. B. Glaſcock's Caſe. Vid. Godb. acc.*

The Cuſtome of a Manor in *Worceſter-ſhire* was, That if any Copy-holder committed Felony, and that the ſame be preſented by 12 Homagers in the Lord's Court, the Tenant ſhould forfeit his Copy-hold. It was preſented that *J S*, a Tenant of the ſaid Manor, had committed Felony at ſuch a time; but that at the Aſſizes next after he was acquitted of the ſame: After which the Lord ſeized the Lands. In this Caſe it was adjudged, That the Cuſtome was not good, becauſe in judgment of Law, before Conviction or Attainder he was not a Felon. *M. 6 Jac. in Co. B. Paginton and Hunt's Caſe.*

But

But whether in that Caſe the Verdict and finding of the Jurors upon the Bill of Indictment agreeing with the finding of the Homagers, that the party had committed Felony, did entitle the Lord to the Copy-hold-lands, notwithſtanding the Acquitall of the Jury which was afterwards, was not Reſolved.

A Copy-holder did alledge the Cuſtome of the Manor to be, That the Lord might grant Copies in Remainder with the aſſent of the Tenants, and not otherwiſe, and that Copies otherwiſe granted in Remainder ſhould be void. It was ſaid, That this Cuſtome might be good, for it might be ſo agreed and granted by the Lord at the beginning upon the Creation of the Manor; and that it ſeemed to be grounded upon the reaſon of the Common Law, That a Remainder ſhould not be without the aſſent of the particular Tenant, and to commence with his Eſtate, and that therefore it was a good Cuſtome. *Quære* the Caſe, for it was not Reſolved, *Mi.* 31 *Eliz. in Co. B.*

M. 31 *Eliz. Co. B.* Godb. 240.

The Cuſtome of a Manor was, That thoſe who claimed Copy-holds by Diſcent ought to come at the firſt, ſecond, or third Court, upon Proclamations made, to take

take up their Eſtates, or elſe they ſhould be forfeited. A Tenant of the Manor (having Iſſue inheritable by the Cuſtome beyond the Sea) died: The Proclamations all paſſed, and the Heir did not return in two years; but upon his return he prayed to be admitted to the Copy-hold, and profered the Lord his Fine in Court, which the Lord refuſed to accept of, and to admit the Heir, but ſeized the Land as forfeited. It was adjudged in this Caſe, That it was no cauſe of Forfeiture, becauſe the Heir was beyond the Seas at the time of the Proclamations, and the Lord was at no prejudice, for that, for any thing appeared in the Caſe, the Lord had taken all the Profits of the Land in the mean time. *H. 7 Jac. in Co. B. Coſley's Caſe.*

The Cuſtome of a Manor was, That every Copy-holder at his death ſhould pay to the Lord his beſt Beaſt for a Heriot: A Feme-ſole within the Manor Tenant for life took a Husband, and died. It was the opinion of *Dodderidge* in this Caſe, That although the Cuſtome was good, yet, as this Caſe was, no Heriot ſhould be paid, becauſe the Wife had not any Goods, by Cattell to pay the ſame. *M. 7 Jac. in Co. B. by Dodderidge.*

A Cu-

M. 42 *Eliz. B. R. Cro.* 1. part, *Parker* and *Combleford's* Caſe.

A Cuſtome of a Manor was ſaid to be, That the Lord had uſed after the death of every one dying within his Manor to have the beſt Beaſt of ſuch a perſon for a Heriot, and to ſeize and diſtrain for it. It was adjudged a void Cuſtome, not good to bind a Stranger: but ſuch a Cuſtome to extend to and bind the Tenants of the Manor might be good.

Vid. 3 & 4 *Eliz. in Co. B. Wilſon* and *Wiſe's* Caſe, *Moore*, acc.

Paſc. 24 *Eliz.* Moore. *Vide Skipwith's* Caſe, *Tr.* 33 *Eliz. in Co. B.* Godb. 143. where the contrary ſeemeth to be adjudged.

The Cuſtome of a Manor was, *Quòd quilibet tenens per Copiam poterit dimittere terras ſuas* for life, in Fee, or otherwiſe; and that a Woman *Coopertà viro poterit deviſare* her Copy-hold-lands to any other, or to her Husband, by the aſſent of the Husband. In this Caſe the Court held, That the Cuſtome was not unreaſonable; but becauſe it was *poterit deviſare*, where it ought to have been alledged *uſi ſunt deviſare*, for that cauſe it was ſaid it was not good.

Paſc. 8 *Jac. in Co. B. Ropley* and *Chaffyn's* Caſe, acc.

Note by the whole Court, That if the Cuſtome of a Manor is alledged to be, That the eldeſt Daughter ſhall ſolely inherit the Land, ſuch a Cuſtome may be good: But then ſuch Cuſtome ſhall be taken ſtrictly, *viz.* That the eldeſt Siſter ſhall not inherit the Land by force of the ſaid Cuſtome.

It

It was Resolved by the Justices, That a Custome that a Lessee for years may hold the Land for half a year after his Term ended, is no good Custome: But it was agreed, That the Lord of a Copy-hold might by Custome lease the same for life and 40 years after, and that such a Custome was good. *Vid. Moore's Rep. 3 E. 6.*

A Custome was alledged, That all Inhabitants of certain Messuages holden of the Bishop of *S* had used to grind their Corn which they used to spend in their Houses, or should sell, at certain Mills, called *the Bishops Mills in S*, and not elsewhere, without the Licence of the Bishop. It was the opinion of the Justices, That it was a void and unreasonable Custome, to grind all their Corn there which they should sell, *&c.* *Tr. 24 Jac. in Co. B. Harbin and Green's Case, Moore 887.*

The Custome of the Manor of *Y* in the County of *Dorset* was, That every Copy-holder might name who should have his Copy-hold, and that the Lord ought to admit the Copy-holder so named at the death of the Nominator. *Quere* if it be a good Custome, because the person nominated hath neither *jus ad rem, nec in re*, the Interest being in the Lord, and a man cannot gain an Interest to himself *P. 13 Jac. Ford and Hoskyn's Case, Moore 842.*

self from the Lord against the will of the Lord. And therefore it was holden, That where the party in that case brought an Action against the Lord for denying to admit him to the Copy-hold upon such Nomination, the Action would not lie. But *Quere* that Case as to the Custome, for that in 45 *Eliz. in B. R.* in *Powell* and *Peacock*'s Case it was adjudged, That a Custome that a Copy-holder in Fee might nominate his Successor, and so *in perpetuum*, was adjudged a good Custome. And *Vid. Brock* and *Spencer*'s Case in *Hobart* 6 and 11. a Custome that such a Copy-holder in Fee might fell Timber-trees was adjudged a good Custome.

45 *Eliz. B. R. Powell* and *Peacock*'s Case.

Vid. Hob. Reports 6, and 11. *Brock* and *Spencer*'s Case.

The Custome of a Manor was, That if any Tenant allowed his Lands holden of the Manor by Writing or Feoffment, or devised them, or surrendred them into the hands of the Lord of the Manor to the Use of another, that such Alienation, Feoffment, Devise or Surrender ought to be presented within one Year next after. It was said, It was no good Custome. But the Court ruled the Custome to be good and agreeable to the Law; for that it is reason that the Lord should know, *&c. Tant. Vid.* before.

P. 41 *Eliz. B. R. Parman* and *Bowyer*'s Case.

Vid. the same Case in *Anderson*'s 2. part, 125. where it seemeth the Custome was much doubted, if good, or not.

A Co-

A Cuſtome was, That a Copy-holder of Inheritance might make a Letter of Attorney to two Joynt-tenants, and ſeverally, to ſurrender his Copy-hold-lands in Fee to certain Uſes after his death. It was Reſolved, That the Cuſtome was a void Cuſtome, becauſe by the death of the Copy-holder the Lands were ſettled in the Heir, and an Authority given to deveſt him was not good. *Vid. Willis and Bucknall's Caſe, in B. R. Style's Reports, 311.*

The Cuſtome of a Manor was, That the Land was deviſable by Cuſtome for 21 years, paying the treble value of the Rent, and if the Leſſee died, that the Term ſhould be to his Heirs, paying for a Fine one year's Rent, and if he aſſigned it, the Aſſignee to have it for one year's value of the Rent, and that he might renew the Deviſe for 3 years value. The Court held all the ſaid Cuſtomes to be good and reaſonable. *M. 21 Jac. Cro. 2. part, Page's Caſe.*

The Cuſtome of a Manor was, That if any Copy-hold-tenant did ſuffer his Meſſuage to be ruined for want of Reparations, and the ſame be preſented in Court by the Homage, that ſuch a Tenant ſhould be amerced, and that the Lord had uſed to diſtrain the Beaſts as well of the Under-tenant as of the Te- *P. 17 Car. in B. R. Thorne and Tyler's Caſe.*

nant himſelf, which were levant and couchant upon the Lands, for ſuch Amercement. It was ſaid, That the Cuſtome was not good, but unreaſonable, to diſtrain a Stranger's Cattel, ſuch as the Under-tenant was. But it was Reſolved that the Cuſtome was good: for the Under-tenant, although he was but Tenant for a year, yet he ſhould have all the benefits and privileges which the Copy-holder himſelf ſhould have had; *& qui ſentit Commodum ſentire debet & Onus*; and he is diſtrainable for the Rents and Services due and payable to the Lord; and the Charge lies upon the Land, and not upon the Cuſtome: and therefore the Cuſtome is good.

H. 37 Eliz. B. R. Brown and Foſter's Caſe, Cro. 1. part, acc.

The Cuſtome of a Manor was ſhewed to be, That any Copy-holder of the Manor may ſurrender within any place of the Manor into the hands of two Tenants; and if a Surrender be to the Uſe of a Stranger, without expreſſing any Eſtate, that the Lord might grant it in Fee to him to whom the Surrender was made. It was objected, That the Cuſtome was unreaſonable, becauſe it is to charge the Land with a greater Eſtate then the Copy-holder gave. On the other ſide it was ſaid, That

That the Custome was good; for that the Lord is Chancellour in his own Court, and might dispose thereof when the Tenant leaves it uncertain. *Quere*; for the Case was not Resolved.

SECT. XX.

Where and in what case a Copy-holder or his Lessee upon an Ouster may have and maintain against the Ejector an Ejectione firme, *and where and in what not.*

Proofs.

IN *Ejectione firme* the Case was, The Plaintiff was Lessee for years of a Copy-hold; and the Custome of the Manor was, That a Copy-holder might let the Land for 3 years. It was the opinion of *Anderson* Chief Justice, That the Lessee of a Copy-holder cannot maintain *Ejectione firme*; but if he might, he ought to shew his Lessor's Estate, or his Licence, or a special Custome, to warrant it. *H. 38 Eliz. C. B. Wells and Partridge's Case, Cro. 1. part.*

A Copy-holder made a Lease for years by Indenture warranted by the Custome. It was adjudged, That the *M. 14 & 15 Eliz. Leon. 1. part, 24.*

Leſſee ſhould maintain *Ejectione firme*; although it was ſtrongly objected, That if it were ſo, then the Plaintiff ſhould have an *Habere facias poſſeſſionem*, and ſo Copy-holds ſhould be ordered by the Laws of the Land.

P. 33 Eliz. in B. R. Cole and Wall's Caſe, Leon. 1. part, 328.

The Cuſtome of a Manor was, That if any Copy-holder of Inheritance died, his Heir within the age of 14 years, then the Lord of the Manor might grant the Cuſtody of his Body and Lands to whom he pleaſed: A Copy-holder of Inheritance died, his Heir within the age of 14 years: The Lord committed the Cuſtody of his Body and Lands to *J S*, who, being ejected, brought a Writ of *Ejectione Cuſtodie* of his Body. It was the opinion of the Juſtices, That the Action did not lie. But it was agreed in that Caſe, That an *Ejectione firme* lieth upon a Demiſe of Copy-hold-lands by Leaſe for years by the Copy-holder himſelf, but not upon a Demiſe by the Lord of the Copy-hold.

Coke 4. part, 26. in Melwich's Caſe. Mo. 8 Jac. in Cr. B. Cranford and Freſh-water's Caſe, acc.

Note, It was Reſolved by the Juſtices, That the Leſſee of a Copy-holder for a year may maintain an *Ejectione firme*: for inaſmuch as his Term is warranted by the Law by force of the general Cuſtome

stome of the Realm, it is but reason that, if he be ejected, he should have an *Ejectione firme*; for it is a speedy Course for a Copy-holder to gain the possession of the Land against a Stranger, being no more then what right requires to be yielded him for the Recovery of his Estate.

H. 39 Eliz. Cro. 1. part, Goodwin and Langhurst's Case, &c.

SECT. XXI.

What Statutes and Acts of Parliament do extend to Copy-holds and Copy-hold-estates, what not.

SOme things concerning this Division being spoken of in the former part of this Treatise, and some particular Statutes there being mentioned within which Copy-holds are included, and in what not, I shall refer the Reader thereunto; adding onely a few Cases upon some particular Acts not therein mentioned, with the Authorities and Resolutions of the Justices therein. And as concerning within what Statutes Copy-holds are, I shall take and relie upon the general Rule which is put in Sir *Edward Coke*'s 3. part of his Reports, in *Heydon*'s Case,

Coke 3. part, Heydon's Case.

viz. When a Statute or Act of Parliament doth alter the Service, Tenure, Intereſt of the Eſtate, or other thing in prejudice of the Lord or of the Cuſtome of the Manor, or in prejudice of the Tenant, there the general words of ſuch Statute or Act of Parliament do not extend to Copy-holds or Copy-hold-eſtates: But when the Statute or Act of Parliament is generally made for the good of the Commonweal, and no prejudice can come thereby, by alteration of any Service, Tenure, or Intereſt, or Cuſtome uſed within the Manor, there Copy-holds and Copy-hold-eſtates are within the purview of ſuch Statutes or Acts.

Proofs.

6 *Jac. in Co. B. Coke* Select Caſes 27, 28.

It was Reſolved by all the Juſtices, That no Tenure ſhall pay for a reaſonable Aid to make the eldeſt Son Knight, or to marry the eldeſt Daughter, but Tenure by Knight's-Service or Tenure in Socage. Now *Littleton* ſaith, that all Tenures are either Knight's-Service or Socage: And the Statute of *Weſtm.* 1. *cap.* 36. of reaſonable Aid extends onely to ſuch Tenures. The Queſtion then is,

Littl. 16 ſect. 36.

Whether

Whether a Copy-hold-Tenure be within that Statute, I ſhall not determine the Queſtion, for that I do not find it moved in any Book of the Common Law: But although I humbly conceive Copy-holds be within the general words of Mr. *Littleton*, (all Tenures in Socage;) yet that the ſaid Statute of *Weſtm. 1. cap.* 36. doth not extend to Copy-holds. *Quere* of it.

Statute *Weſtm. 2. de Donis.*

The Statute of *Weſtm. 2. de Donis conditionalibus* I conceive doth not extend to Copy-holds within the general words thereof. The words of the Statute are of Gifts *per Chartam datis*; and Copy-holds do not paſs by Deeds, but by Surrenders. But yet it is conceived, that although they be not within the general Words of the Statute, yet they are within the Equity of the ſaid Statute, if there be a Cuſtome to warrant ſuch Eſtates.

H. 37 Eliz. in Co. B. Church and *Wyatt's* Caſe, *Moore* 637.

The Caſe was, A Copy-holder in Fee ſurrendred his Copy-hold-lands to the Uſe of his Will; and having a Daughter born, and his Wife with Child, he deviſed part of his ſaid Lands to his Son or Daughter which his Wife went with, *& Hæredibus ſuis legitimè procreatis*; and the reſidue thereof he deviſed to his Daugh-

Daughter born, to have to her and the fruit of her body. One Point in this Caſe was, What Eſtate the Daughter born had in the ſaid Copy-hold-lands, if in Tail or not. It was ſaid, It was a Fee-tail in the Daughter born. But it was much doubted if it was an Eſtate within the ſaid Statute *de Donis, &c.* But in that Caſe it was agreed, That Copy-hold might be entailed by Cuſtome co-operating with the ſaid Statute, and if not within the words, yet within the Equity of the ſaid Statute.

Stat. *Prærogat. Regis*, cap. 9 & 10. *Co.* 8. part, 170. in *Tomerſon's* Caſe. *Co.* 4. part, 127. in *Beverly's* Caſe.

The Statute of *Prærogativa Regis, cap.* 9 and 10. gives the Lands of Idiots natural to the King, he finding them convenient Maintenance out of the Profits thereof: But if the Idiot hath Copy-hold-lands diſcended unto him, the King ſhall not have the Wardſhip of thoſe Lands therewith, out of the Profits thereof to maintain the Idiot, becauſe the ſame would be prejudicial to the Lord of the Manor, of whom the Lands are holden by Copy. But yet all Alienations made by an Idiot of his Copy-hold-lands, after Office found, ſhall be avoided by the King.

Copy-

Copy-hold-lands are not within the Statute of Weſtm. 2. cap. 20. *of* Executions. *Stat. Weſt. 2. cap. 20.*

For if a Judgment be had in a Court of Record againſt a Copy-holder for Debt and Dammages, although the Plaintiff may have Execution by *Fieri facias* againſt his Goods, or a *Capias* againſt his Body; yet he cannot have Execution of the moyetie of his Copy-hold-lands by *Elegit*, for that Copy-hold-lands are not within that Statute. And ſo it is, if a Statute-Merchant or Staple be acknowledged by a Copy-holder for the payment of Money at a day certain, which is not payed, his Copy-hold-lands are not extendable for the ſame. And the reaſon of theſe Caſes is, becauſe no perſon can come to Copy-holds but by Admittance of the Lord; and the Lord ſhould thereby loſe his Fine which is due upon Admittance, if the party might have the Lands upon Extent delivered unto him.

If Tenant by the Curteſie, or Leſſee for years, be of a Manor, and Copy-holds were in his hands by Forfeiture or other *Paſc. 12 Eliz. in Co. B. Moore 94.*

other determination, and he bindeth himſelf in a Statute, and afterwards he deviſeth the Copy-hold again; the Copy-hold ſhall be liable to the Statute. But if a Copy-holder bindeth himſelf in a Statute-Merchant or Staple, his Copy-hold-lands ſhall not be extended upon the ſaid Statute, becauſe therein he hath but an Eſtate at will.

Stat. 31 H. 8. cap. 13.

Copy-hold-lands are not within the Statute of 31 H. 8. cap. 13. *of* Monaſteries.

M. 25 & 26 *Eliz.* in the *Exchequer*, *Leon.* 1. part, 4.

The Guardians of the Colledge of *Otlery*, Lords of a Manor, granted Lands for 3 Lives by Copy, according to the Cuſtome of the Manor; afterwards in 30 *H.* 8. they leaſed the Lands to *JS*, rendring the accuſtomed Rent, and afterwards ſurrendred their Colledge to King *Hen.* 8. And if the Leaſe, being within one year of the Surrender, was within the Statute or not, was the Queſtion. The Caſe is not adjudg'd, but a *Quere* made of it. But in that Caſe it was adjudged, That if there be Lord of a Copy-holder for life, and the Lord grants a Rent-charge out of his Manor, of which the Copy-hold is parcell, and then the Copy-hol-

der

der doth ſurrender to the Uſe of another, who is admitted; he ſhall not hold the Lands charged: but if he dieth, ſo as his Eſtate is determined, and the Lord grants the Land to another *de novo* to hold by Copy, the new Tenant ſhall hold the Land charged.

Copy-hold-lands not within the Statute of 32 H. 8. *of* Rents.

The Lord of a Manor (of which there were Copy-holds) granted a Rent-charge for life, and afterwards made a Feoffment of the Manor to *J S* and his Heirs, who granted a Copy-hold for life: *J S* died, and the Rent was behind, and the Grantee of the Rent diſtrained for the Arrerages. It was Reſolved in that Caſe, That the poſſeſſion of the Copy-holder was not chargeable to the Diſtreſs, for that the Copy-holder was not in by him who immediately ought to pay the Rent, but in the poſſeſſion of the Land by the Cuſtome. But *Quere* that Caſe: and *vide Hill.* 18 *Eliz. in Co. B.* the Earl of *Weſtmorland*'s Caſe. For there the Caſe was, That the Demeſnes of a Manor were uſually let for lives

Tr. 27 *Eliz. in B. R. Rot.* 1201. *Sands and Hempſtrie's Caſe, Leon.* 2. part, 109.

Hil. 18 *Eliz. in Co. B.* the Earl of *Weſtmorland's* Caſe, *Leon.* 3. part, 59.

lives by Copy, and the Lord granted a Rent-charge to *J D pro Conſilio impendendo* for life, and afterwards conveyed the Manor to *J N* in Tail: The Rent was behind, and the Grantee of the Rent died, and the Executors of the Grantee diſtrained for the Arrerages. And there it was adjudged, That the Copy-holder ſhould hold the Lands charged.

Copy-hold-lands not within the Statute of 32 H. 8. *of* Conditions.

A Copy-holder by Licence made a Leaſe by Indenture for 21 years rendring Rent: The Leſſee covenanted to lay upon the Lands yearly 40 Loads of Dung: Afterwards the Copy-holder ſurrendred his Lands unto another in Fee, who was admitted. The Point was, If he was ſuch an Aſſignee as might have Covenant within the Statute of 32 *H.* 8. *Quere*; for the Caſe was not Reſolved.

M. 20 *Jac. in C. B. Plott* and *Plomer's* Caſe, *Cro.* 1. part, 17.

A Copy-holder by Licence of the Lord made a Leaſe for 60 years, if he ſo long lived, rendring Rent, upon Condition to re-enter: The Copy-holder ſurrendred to the Leſſor of the Plaintiff in Fee, who demanded the Rent, which was not payed.

Tr. 10 *Jac. in B. R. Braſier* and *Beale's* Caſe, *Telv.* 223.

ed. It was Reſolved in this Caſe, That the Entry of the Leſſor was not lawfull, for that Copy-hold-lands were not within the Statute of *Conditions*, nor the Leſſor ſuch an Aſſignee as the Statute intended: For the Aſſignee of a Copy-holder being in onely by Cuſtome, is not privy to the Leaſe made by the firſt Copy-holder, nor in by him, but may plead his Eſtate immediately under the Lord.

Note, That in no caſe, where the King claims a ſhare in the Forfeiture of the Lands, (as in the Statute of 2 *H.* 5. which ſpeaks of Lands forfeited for Hereſie, *viz.* that the King ſhall have *Annum, diem & vaſtum*, as he hath for Lands forfeited for Felony) Copy-hold-lands are not within the general words of ſuch Statute; for that in ſuch caſe, if the Copy-holder committeth Felony, the Copy-hold is preſently forfeited to the Lord of the Manor; and therefore out of the words of that Statute, and other the like Statutes.

The Statute of 12 *Eliz. cap.* 8. which ſpeaks of Inquiſitions or Offices found by Eſcheators, doth not extend to Copy-hold-

lands:

lands: for although the ſame are not found within the Inquiſitions or Offices, yet the King ſhall not be entitled to any of the ſaid Copy-hold-lands, but all ſuch Copy-holders ſhall and may hold and enjoy their Eſtates and Intereſts in their ſaid Copy-hold-lands as formerly they might have done; and the Intereſt of the Copy-hold is preſerved by the ſaid Statute, though it be not found by Office after the death of the King's Tenant.

Vid. 30 Eliz. *in Scaccario, Leon.* 1. part, 98. The Statute of 13 *Eliz. cap.* 4. of Auditors and Regiſters of the Queen, doth not extend to Copy-holds, for that it ſhould be a great prejudice.

Then for the ſecond part of this Diviſion.

Proofs.

Copy-hold-lands are within the Statute of 4 H. 7. *of* Fines.

Vid. 30 Eliz. *Leon.* 99. acc. If I levy a Fine of my Copy-hold-lands, and 5 years paſs; not onely the Lord is thereby barred as to the Freehold of it and the Inheritance, but I, who

who am the Copy-holder, am also barred as to my Possession: For the intent of the Statute was to take away all Controversies, *& litibus finem imponere*; and Contention may as well arise and be about Copy-hold-lands as for Free-hold-lands at the Common Law.

Vid. Coke 5. part, Sattyn's Case.

Copy-hold-lands are within the Statute of 29 Eliz. *and other Statutes of* Recusancy.

A Recusant being convict for not paying of 20 *l.* a month forfeited by the said Statute, a Commission issued out of the *Exchequer* to enquire and seize all his Goods, Lands, Tenements and Hereditaments liable to such Seizure: Upon the Return of the Commission it appeared, That some of the Lands returned were Copy-hold-lands. It was a Question if they were within the Statute. It was the opinion of the Court, That they were within the Equity of the Statute: for the words of the Statute are, *Lands, Tenements and Hereditaments*, which are forcible words; and the intention of the Statute was, That the Queen should have all the Goods, and the Recusant by

Tr. 30 Eliz. in Scaccario, Saliard and Everat's Case, Leon. 1. part. 97.

the words of the Statute was onely to have the third part of his Lands, which is all that the Law gives him: And if Copy-hold-lands ſhould not be within the Statute; if a Recuſant, who had great Poſſeſſions onely of Copy-hold-lands, ſhould go unpuniſhed, it was contrary to the meaning of the Makers of the Act.

Copy-holds are within the Statutes of 13 Eliz. *and* 1 Jacobi.

Tr. 15 *Jac.* in B. R. *Criſp and Prat's Caſe, Noth.* 34, 35, *and* 36.

It was Reſolved by all the Juſtices, That Copy-hold is within the Statutes of 13 *Eliz.* and 1 *Jacobi*, becauſe it is no prejudice to the Lord, for that there ought to be a Compoſition with the Lord and the Vendee of the Lands; and although the Sale is and ought to be by Indenture, yet the Vendee ought to be admitted by the Lord. 2. The words of the Statute of 13 *Eliz.* expreſly are, That the Commiſſioners ſhall diſpoſe of Lands as well Copy as Free; and the ſaid Statutes ſhall be conſtrued moſt beneficially for Creditors, *i. e. ſuum cuique tribuere.*

There

There are divers other Statutes and Acts of Parliament which extend to Copy-hold-lands, *viz.* 1. The Statute of 5 *Eliz. cap.* 13 & 14. of *Forgery.* 2. The Statutes of 5 *R.* 2. of *Departure out of the Realm,* and 14 *Eliz.* of *Fugitives.* 3. The Statute of 32 *H.* 8. *cap.* 9. of *Buying of Pretensed Titles.* All which Statutes extend to Copy-hold-lands; of which I might shew many Cases and Resolutions of the Justices in their several Courts. But because the same would make this Section to be long and tedious, and my Intention was to use much brevity in this Addition and Amplification of what in the former part of this Treatise hath been written concerning *Copy-hold and Customary Estates*; I shall here put an End to the Work.

FINIS.

The Contents of the ſeveral Sections.

SECTION I.

WHat a Surrender of Copy-hold or Cuſtomary Eſtate is; to whom, and in what manner and place it is to be done; and who ſhall be ſaid ſuch a Tenant of a Copy-hold, as may make ſuch a Surrender. Page 1

Sect. II. *Whether a Copy-hold may be ſaid to be ſurrendred by any Act, Words, or Agreement, made betwixt the Lord and the Copy-holder, or by the Copy-holder with a Stranger made in the Court, in the Preſence of the Lord or his Steward.* 5

Sect. III. *Of Surrenders out of Court; and where Surrenders to the Steward, Deputy-ſteward, or into the hands of Tenants of the Manor, out of Court, ſhall be good, where not.* 9

Sect. IV. *Where, although Surrenders are made*

made to the Lord or to Tenants out of Court by Custome, yet nothing passeth out of the Copy-holder before Admittance: And what shall be a good Admittance in such case, what not. 17

Sect. V. Where some things, and what things, may be done by the Copy-holder or his Heir before Admittance. 21

Sect. VI. Where the Lord is but an Instrument to convey the Copy-hold by Admittance onely, and that the Surrenderee is in by the Copy-holder, and not by the Lord. 23

Sect. VII. Where the Admittance of the particular Tenant shall be the Admittance of him in the Remainder. 27

Sect. VIII. By what and whose Act, either of the Law, of the Copy-holder himself, or of the Lord, severally or all together, the Copy-land or Estate shall be gone, determined, or extinguished; and where suspended onely. 30

Sect. IX. Of Forfeitures of Copy-holds and Copy-hold-estates; and what Acts or things done by the Copy-holder shall amount unto or be adjudged a Forfeiture of the Copy-holder's Estate, what not. 36

Sect. X. Where deniall or refusall to pay his

his Rent, Fine, or to doe his other Customes and Services, shall be a Forfeiture of his Copy-hold and Copy-hold-estate, and where not. 39

Sect. XI. *Where the Act of the Lord, and what Act of his, shall dispense with a Forfeiture made by his Copy-holder; where and what not.* 48

Sect. XII. *Whether Copy-hold-lands be within the Statute of* Westm. 2. *and may be entailed, or not; and where and by what Acts the Issues in tail may be barred; and what shall be a Discontinuance of the Estate, what not.* 51

Sect. XIII. *What things are incident to a Copy-holder, and what he may take of common right without the Grant or Licence of the Lord: And what Acts upon the Land shall bind the Copy-holder, what not.* 64

Sect. XIV. *Where the Lord of the Manor shall be Chancellour in his own Court, to determine the Differences which arise betwixt Copy-holders.* 69

Sect. XV. *Of Surrenders upon Conditions; and where such Surrenders shall be good, where not.* 79

Sect. XVI. *Where Customs which warrants the*

the Lord or his Copy-holder to grant greater Eſtates, warrants the Grants of leſſer Eſtates. 76

Sect. XVII. *Who ſhall be ſaid ſuch a Lord of a Manor as may grant Copy-hold-eſtates; and how long ſuch Eſtates ſhall continue; and what perſons ſhall be capable of Copy-hold-eſtates, what not; and what may be granted by Copy.* 79

Sect. XVIII. *What Acts or things are inſeparable, and muſt be done by the Copy-holder himſelf; and what acts and where may be done by his Attorney.* 83

Sect. XIX. *What Cuſtomes within Copy-hold-Manors ſhall be ſaid to be good and reaſonable Cuſtomes, and what not.* 88

Sect. XX. *Where and in what caſe a Copy-holder or his Leſſee upon an Ouſter may have and maintain againſt the Ejector an* Ejectione firme, *and where and in what not.* 97

Sect. XXI. *What Statutes and Acts of Parliament do extend to Copy-holds and Copy-hold-eſtates, what not.* 99

FINIS.

7/10/29